THE COMMON-WEALTH OF ENGLAND:

And the manner and Governement thereof.

COMPILED BY THE Honourable Sir *Thomas Smith*, Knight, Doctor, of both Lawes, and one of the principall Secretaries unto the two most worthy Princes, King EDWARD, and Queene ELIZABETH.

With new Additions of the chief Courts in ENGLAND, and the Offices thereof, by the said *Author*.

LONDON,
Printed by *R. Young* for *J. Smethwicke*, and are to be sold at his shop in S. *Dunstans* Church-yard.
1640.

To the Reader.

TO conceale the graces inſpired by God, or the gifts ingrafted by nature, or the vertues atchieved unto our ſelves by induſtry, in all ages, and of all wiſemen, was accounted undutifulneſſe, unkindneſſe, and impiety unto that common-wealth, in which, and unto the which wee are both bred and borne: but to ſuppreſſe the worthy workes of any Authour, may juſtly bee judged not only injurie to the perſon, but even envie to the whole World. Wherefore, chancing upon this ſhort Diſcourſe compiled by the Honourable Knight Sir *Thomas Smith*, and conſidering that the ſame could not but be a great light to the ignorant, and no leſſe delight unto the learned in the Lawes

and policy of ſundry Regiments, I thought it part of my duty, as well for the reviving of the fame of ſo notable a man, as for the publike imparting of ſo pithy a Treatiſe, to preſent the ſame unto thy indifferent and diſcreet judgement. Wherein, although the errours and raſhneſſe of Scribes, appearing in the contrariety, and corruption of Copies, happening both by the length of time ſince the firſt making, as alſo by the often tranſcribing, might juſtly have beene mine excuſe, or rather diſcharge; yet weighing the authoritie of the Authour, together with the gravity of the matter, I made no doubt but that the reverence due unto the one, and the recompence deſerved by the other, would eaſily countervaile all faults committed by a Clarke and Writer. And whereas ſome termes or other matters may ſeeme to diſſent from the uſuall phraſe of the Common-Law of this Realme: notwithſtanding, to him

that

that will consider that the profession of the maker was principally in the Civill lawes, and therefore not to be expected as one excellent in both: and also that the finishing of this worke was in France, farre from his Library, and in an Embassage, even in the midst of waightie affaires, it cannot, nor ought not without great ingratitude be displeasant, or in any sort disliking. Wherefore (gentle Reader) accept in good part my zeale, and this honorable mans travaile, assuring thy selfe that the same, framed by an expert work-master, and forged of pure and excellent metall, will not faile in proving to be a commodious instrument.

Vale

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THE MANNER OF GOVERNMENT, OR POLICIE OF THE REALME OF ENGLAND.

CHAP. I.

Of the diverſities of Common-wealths or Governments.

THey that have written heretofore of Common-wealths, have brought them into three moſt ſimple & ſpeciall kinds or faſhions of Government. The firſt, where one alone doth govern, is called of the Greeks Μοναρχία; the ſecond, where the ſmaller number, commonly called of them Ἀριστοκρατία; and the third, where the multitude doth rule, Δημοκρατία. To rule is underſtood to have

Monarchia.

Ariſtocratia.

Democratia.

have the higheſt and ſupreme authoritie of commandement. That part or member of the Common-wealth is ſaid to rule, which doth controll, correct, and direct all other members of the Common-wealth. That part which doth rule, define & command according to the forme of the government, is taken in every Common-wealth to be juſt & Law: As a rule is alway to be underſtood to be ſtraight, & to which all workes are to be conformed, and by it to be judged: I do not meane the *Lesbians* rule, which is conformed to the ſtone: but the right rule whereby the Artificer and the Architect do judge the ſtraightneſſe of every mans worke: And he to be reckoned to make his work perfecteſt, who goeth neereſt to the ſtraightneſſe.

Chap. II.

What is juſt or Law in every Common wealth or Government.

NOw it doth appeare, that it is profitable to every Common-wealth

wealth (as it is to every thing generally and particularly) to be kept in her moſt perfect eſtate. Then if that part which doth beare the rule, doe command that which is profitable to it, and the cõmandement of that part which doth rule on that ſort, is to be accepted in every Common-wealth reſpectively to be juſt (as we have ſaid before) it muſt needs follow, that the definition which *Thraſimachus* did make, That to be juſt, which is the profit of the ruling & moſt ſtrong part (if it be meant of the Citie or Common-wealth) is not ſo far out of the way, if it be civilly underſtood, as *Plato* would make it. But as there is profit, & likelihood of profit, ſo there is right and likelihood of right. And as well may the ruling & ſoveraign part cõmand that which is not his profit, as the juſt man may offend (notwithſtanding his juſt and true meaning) when he would amend that which is amiſſe, & help the Common-wealth, and doe good unto it. For inaſmuch as he attempteth to do cõtrary to the

Law

Law which is already put, he therefore by the Law is justly condemned, because his doing is contrary to the Law and the Ordinance of that part which doth command.

Chap. III.
Another division of Common-wealths.

But this matter yet taketh another doubt: for of these manner of rulings by one, by the fewer part, and by the multitude or greater number, they which have more methodically, and more distinctly and perfitly written upon them, do make a subdivision: and dividing each into two, make the one good and just, and the other evill and unjust: as where one ruleth, the one they call a King, or Βασιλεὺς, the other τύραννος, a Tyrant: where the fewer number, the one they name a governing of the best men Ἀριστοκρατίαν, or *Remp. Optimatũ*, the other of the usurping of a few Gentlemen, or a few of the richer and stronger sort, ὀλιγαρχίαν, or

or *Paucorum Poteſtatem:* and where the multitude doth govern, the one they call a Common-wealth by the generall name πολιτείαν, or the rule of the people δημοκρατίαν; the other, the rule or the uſurping of the popular, or raſcall or viler ſort, becauſe they bee more in number, δημοκρατίαν ὀχλικήν.

CHAP. IV.

Examples of change in the manner of Government.

IN Common-wealths which had long continuance, the diverſities of times have made all theſe manners of ruling or government to be ſeen: as in *Rome*, Kings, *Romulus*, *Numa*, *Servius*, Tyrants, *Tarquinius*, *Sylla*, *Caſar:* the rule of the beſt men, as in the time when the firſt Conſuls were: and the uſurping of a few, as of the Senatours after the death of *Tarquinius*, and before the ſucceſſion of the Tribunate, and manifeſtly in the *Decem-virate*, but more perniciouſly in the *Trium-virate* of *Caſar*, *Craſ-*

Craſſus, and *Pompeius*: and afterward in the *Trium-virate* of *Octavius*, *Antonius*, and *Lepidus*: The Common-wealth and rule of the people in the repulſing of the *Decem-viri*, and long after, eſpecially after the Law was made, either by *Horatius*, or (as ſome would have it) *Hortenſius*, *quod plebs ſciverit*, *id populum teneat*: And the ruling and uſurping of the popular and raſcall, as a little before *Sylla* his reign, and a little before *Caius Ceſars* reigne. For the uſurping of the Raſcality can never long endure, but neceſſarily breedeth, and quickly bringeth forth a Tyrant. Of this hath *Athens*, *Siracuſe*, *Lacedemon*, and other old ancient ruling Cities had experience, and a man need not doubt but that other Common-wealths have followed the ſame rate. For the nature of man is, never to ſtand ſtill in one manner of eſtate, but to grow from the leſſe to the more, and decay from the more againe to the leſſe, till it come to the fatall end and deſtruction,

on, within any turnes and turmoyles of ſickneſſe, and recovering; ſeldome ſtanding in a perfect health neither of a mans body it ſelfe, nor of the politick body which is compact of the ſame.

CHAP. V.

Of the queſtion what is right and juſt in a Common-wealth.

SO when the Common-wealth is evill governed by an evill Ruler and unjuſt (as in the three laſt named, which bee rather a ſickneſſe of the politick body, then perfect and good Eſtates) if the Lawes be made, as moſt like they be alwaies, to maintaine that Eſtate: the queſtion remaineth, Whether the obedience of them bee juſt, and the diſobedience wrong? the profit and conſervation of that Eſtate, Right and Juſtice, or the diſſolution? and whether a good and upright man, and lover of his Country ought to maintaine and obey them, or to ſeek by all meanes to abo-

abolish them? which great & haughtie courages have often attempted: as *Dion* to rise up against *Dionysius*; *Thrasibulus* against the 30. Tyrants; *Brutus* and *Cassius* against *Cæsar*, which hath bin cause of many commotions in Common-wealths; whereof the judgement of the common people is according to the event and successe; of them which be learned, according to the purpose of the doers, and the estate of the time then present. Certain it is, that it is alwaies a doubtfull and hazardous matter to meddle with the changing of Lawes and Government, or to disobey the orders of the Rule or Government, which a man doth find alreadie established.

CHAP. VI.

That Common-wealths or Governments are not most commonly simple, but mixt.

NOw although the Governments of Common-wealths bee thus di vi-

divided into two, ſo into ſixe: yet you muſt not take that yee ſhall find any Common-wealth or Government ſimple, pure, and abſolute in his ſort and kind: but as Wiſemen have divided for underſtanding ſake, and fantaſied foure ſimple bodies, which they call Elements; as Fire, Aire, Water, Earth: and in a mans Bodie four Complexions or Temperatures, as Cholerick, Sanguine, Flegmatick and Melancholick; not that yee ſhall find one utterly perfect without mixture of the other, for that Nature almoſt will not ſuffer, but underſtanding doth diſcerne each nature as in his ſinceritie: ſo ſeldome or never ſhall you find Common-wealths or Governments which are abſolutely and ſincerely made of any of them above named, but alwaies mixed with another, and hath the name of that which is more, and over-ruleth the other alwaies, or for the moſt part.

CHAP.

CHAP. VII.

The definition of a King and a Tyrant.

WHere one person beareth the rule, they define that to be the state of a King, who by succession or election commeth with the good will of the people to that Government, and doth administer the Common-wealth by the Lawes of the same, and by equitie, and doth seek the profit of the people as much as his owne. A Tyrant they name him, who by force commeth to the Monarchie against the will of the people, breaketh Lawes alreadie made, at his pleasure, maketh other without the advice & consent of the people, and regardeth not the wealth of his Commons, but the advancement of himselfe, his Faction, and kindred. These definitions do contain three differences: the obtaining of the authoritie, the manner of administration thereof, and the Butt or

Marke

Marke whereunto it doth tend and shoot. So as one may be a Tyrant by his entry and getting of the Government, and a King in the administration thereof. As a man may thinke of *Octavius*, and peraduenture of *Sylla*: For they both comming by tyrannie and violence to that state, did seeme to travell very much for the better order of the Common-wealth: howbeit, either of them after a divers manner. Another may be a King by entry, and a Tyrant by administration: as *Nero*, *Domitian*, and *Commodus*: for the Empire came to them by succession; but their administration was utterly tyrannicall; of *Nero* after five yeeres; of *Domitian* and *Commodus*, very shortly upon their new honour. Some both in the comming to the Empire, and in the Butt the which they shoot at, be Kings, but the manner of their ruling it tyrannicall, as many Emperours after *Cæsar* and *Octavius*, & many Popes of *Rome*. The Emperors claime this tyrannical power by pretence of that

Rogation or *Plebiſcitum*, which *Caius Caſar*, or *Octavius* obtained, by which all the people of *Rome* did conferre their power and authoritie unto *Caſar* wholly.

The Pope groundeth his from Chriſt (*cui omnis poteſtas data eſt in cœlo & in terra*) whoſe Succeſſor he pretendeth to be: yet the generall Councels make ſtrife with him, to make the Popes power either *Ariſtocratiam*, or at the leaſt *legitimum regnum*, and would faine bridle that *abſolutam poteſtatem*. Some men do judge the ſame of the Kings of *France*, and certain Princes of *Italy*, and other places, becauſe they make and abrogate Lawes and Edicts, lay on Tributes and Impoſitions of their own will, or by the private counſell and advice of their friends and favourers onely, without the conſent of the people. The people, I call that which the word *Populus* doth ſignifie, the whole bodie, and the three Eſtates of the Common-wealth: and they blame *Lewes* the Eleventh, for bringing

bringing the administration Royall of *France*, from the lawfull and regulate Reigne, to the absolute and tyrannicall Power and Government. He himselfe was wont to glory and say, he had brought the Crowne of *France, hors de page*, as one would say, out of Wardship.

CHAP. VIII.

Of the absolute King.

OTher doe call that kind of administration which the Greeks do call παμβασιλείαν, not tyranny, but the absolute power of a King, which they would pretend that every King hath, if he would use the same. The other they call βασιλείαν νομικὴν or the Royall power regulate by Lawes: of this I will not dispute at this time. But as such absolute administration in time of warre, when all is in Armes, and when Lawes hold their peace, because they cannot be heard, is most necessary: so in time of

peace the ſame is very dangerous, as well to him that doth uſe it, & much more to the people upon whom it is uſed: whereof the cauſe is the frailtie of mans nature, which (as *Plato* ſaith) cannot abide or beare long that abſolute and uncontrolled authoritie, without ſwelling into too much pride and inſolencie. And therefore the *Romanes* did wiſely, who would not ſuffer any man to keep the *Dictatorſhip* above ſix moneths, becauſe the *Dictators* (for that time) had this abſolute power, which ſome Greeks named a lawfull tyrannie for a time. As I remember, *Ariſtotle*, (who of all Writers hath moſt abſolutely and methodically treated of the diviſion & natures of Common-wealths) maketh this ſort of government to be one kind of Kings. But all commeth to one effect: for at the firſt all Kings ruled abſolutely, as they who were either the Heads and moſt ancient of their Families, derived out of their own bodies, as *Adam*, *Noe*, *Abraham*, *Jacob*, *Eſau*, reigning

reigning absolutely over their owne children & bondmen, as reason was: or else in the rude World, amongst barbarous and ignorant people: some one then, whom God had endued with singular wisdome, to invent things necessary for the nourishment and defence of the multitude, and to administer Justice, did so farre excell other, that all the rest were but beasts in comparison of him: and for that excellency, willingly had this authoritie given him of the multitude, and of the Gentiles when he was dead, and almost when he was yet living, was taken for a God, of others for a Prophet. Such among the *Jewes* were *Moses*, *Joshua*, and other Judges, as *Samuel*, *&c.* *Romulus* and *Numa* amongst the *Romans*: *Lycurgus* and *Solon*, and divers others among the *Greeks*: *Zamolxis* among the *Thracians*: *Mahomet* among the *Arabians*; And this kind of rule among the *Greeks* is called τύραννις, which of it selfe at the first was not a name odious; but because they who had such

rule, at the first, did for the most part abuse the same, waxed insolent and proud, unjust, and not regarding the Common-wealth, committed such acts as were horrible and odious: As killing men without cause, abusing their Wives and Daughters, taking and spoyling all mens goods at their pleasures, and were not Shepheards as they ought to be, but rather Robbers and Devourers of the people: whereof some were contemners of God, as *Dionysius*; others lived like Divels, and would yet be adored and accounted for Gods, as *Caius Caligula* and *Domitian*: and that kind of administration, and manner also, at the first not evill, hath taken the signification, and definition of the vice of the abusers, so that now both in Greek, Latine, and English, a Tyrant is counted he, who is an evill King, and who hath no regard to the wealth of his people, but seeketh onely to magnifie himselfe, and his, and to satisfie his vicious and cruell appetite without respect of God, of

right,

right, or of the Law: becauſe that for the moſt part, they which have had that abſolute power, have been ſuch.

CHAP. IX.

Of the name of King, and the adminiſtration of England.

THat which we call in one ſyllable King in Engliſh, the old Engliſhmen, and the Saxons from whom our tongue is derived, to this day call in two ſyllables, *Cyning*; which whether it commeth of *Cen* or *Ken*, which betokeneth to know and underſtand, or *Can*, which betokeneth to bee able, or to have power; I cannot tell. The participle abſolute of the one wee uſe yet, as when we ſay, a cunning man, *Vir prudens aut ſciens*: the Verbe of the other, as I can do this, *poſſum hoc facere*. By old and ancient Hiſtories that I have read, I do not underſtand that our Nation hath uſed any other generall authoritie in this Realme, neither *Ariſtocraticall*, nor

Democraticall, but onely the Royall and Kingly Majestie, which at the first was divided into many and sundry Kings, each absolutely raigning in his Country, not under the subjection of other, till by fighting the one with the other, the overcommed alwaies falling to the augmentation of the vanquisher and overcommer: At the last the Realme of England grew into one Monarchie. Neither one of those Kings, neither he who first had all, tooke any Investiture at the hands of the Emperour of Rome, or of any other superiour or forreine Prince, but held of God to himselfe, and by his Sword, his People and Crowne, acknowledging no Prince on Earth his Superiour: and so it is kept & holden at this day; although King *John* (by the Rebellion of the Nobilitie, aided with the Daulphin of *France* his power) to appease the Pope, who at that time possessing the consciences of his Subjects, was then also his enemy, and his most grievous torment (as some Histories do witnesse)

neſſe) did reſigne the Crown to his Legate *Pandulphus*, and tooke it againe from him, as from the Pope, by Faith and Homage, and a certaine Tribute yeerely. But that act being neither approved by his people, nor eſtabliſhed by Act of Parliament, was forthwith and ever ſithence taken for nothing, either to binde the King, his Succeſſors, or Subjects.

CHAP. X.

What is a Common wealth, and the parts thereof.

TO be underſtood hereafter, it is neceſſary yet to make a third diviſion of the Common-wealth by the parts thereof. A Cõmon-wealth is called a ſocietie or common doing of a multitude of Freemen, collected together, and united by common accord and covenants among themſelves, for the conſervation of themſeves as well in Peace as in Warre.

For properly an Hoaſt of men is not called a Cõmon wealth, but abuſively, becauſe they are collected but for a time, and for a fact: which done, each divideth himſelfe from others as they were before. And if one man had, as ſome of the old *Romans* had, (if it bee true that is written) five thouſand, or ten thouſand bondmen whom hee ruled well; though they dwelled all in one Citie, or were diſtributed into divers Villages, yet that were no Common-wealth: for the bondman hath no communion with his Maſter, the wealth of the Lord is onely ſought for, and not the profit of the ſlave or bondman. For as they who write of theſe things have defined, a bondman or ſlave, as it were (ſaving life or humane reaſon) is but the inſtrument of his Lord, as the Axe, the Saw, the Cheſſill and Gowge is of the Carpenter. Truth it is, the Carpenter looketh diligently to ſave, correct, and amend all theſe: but it is for his owne profit, and in conſideration of himſelfe, not for the

the Instruments sake. And as these be instruments of the Carpenter, so the Plough, the Cart, the Horse, Oxe, or Asse, be Instruments of the Husbandman: & though one Husbandman had a great number of all these, and looked well to them, it made no Common-wealth, nor could not be so called. For the private wealth of the Husbandman is only regarded, and there is no mutuall societie or portion, nor Law, nor pleading betweene the one and the other. And (as hee saith) what reason hath the Pot to say to the Potter, Why mad'st thou mee thus? or why doest thou breake me after thou hast made me? Even so is the bondman or slave which is bought for mony, for hee is but a reasonable and living instrument, the possession of his Lord and Master, reckoned among his goods, not otherwise admitted to the societie Civill or Common-wealth, but is part of the possession and goods of his Lord. Wherefore, except there be other orders and administrations amongst

mongſt the *Turks*, if the Prince of the *Turkes* (as it is written of him) do repute all other his bondmen and ſlaves (himſelfe and his ſons onely free-men) a man may doubt whether his adminiſtation be to be accounted a Common-wealth, or a Kingdome, or he rather to be reputed only as one that hath under him an infinite number of ſlaves or bondmen, among whom there is no right, law, nor Common-wealth compact, but onely the will of the Lord and *Seignior*. Surely none of the old *Greeks* would call this faſhion of Government, *Remp.* or πολιτείαν, for the reaſons which I have declared.

CHAP. XI.

The firſt ſort, or beginning of an Houſe or Family, called οἰκονομία.

THen if this be a Societie, and conſiſteth only of freemen, and the leaſt part thereof muſt bee two; the

the naturalleſt, and firſt conjunction of two, toward the making of a further ſocietie of continuance, is of the Husband and of the Wife after a divers ſort; each having care of the Family: the man to get, to travell abroad, to defend; the Wife to ſave that which is gotten, to tarrie at home, to diſtribute that which commeth of the Husbands labour, for the nurtriture of the Children, and Family of them both, and to keepe all at home neat and cleane. So nature hath forged each part to his office: the Man ſterne, ſtrong, bold, adventurous, negligent of his beautie, and ſpending: The woman weake, fearfull, faire, curious of her beautie and ſaving. Either of them excelling other in wit and wiſdome, to conduct thoſe things which appertaine to their office, and therefore where their wiſdome doth excell, therein it is reaſon that each ſhould governe. And without this ſocietie of man and woman the kind of man could not long endure. And to this ſocie-

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tie men are so naturally borne, that the Prince of all Philosophers, in consideration of natures, was not afraid to say, that a man by nature is rather desirous to fellow himselfe to another, and so to live in couple, then to adhere himselfe with many. Although of all things or living creatures, a man doth shew himselfe most politick, yet can hee not well live without the societie and fellowship Civill. *He that can live alone*, saith Aristotle, *is either a wilde Beast in Mans likenesse, or else a God rather then a man.* So then the House and Family is the first and most naturall (but private) apparence of one of the best kinds of a Common-wealth, that is called *Aristocratia*, where a few, and the best doe governe: and where not one alwaies, but sometime and in some thing another doth beare the rule. Which to maintaine for his part, God hath given to the man greater wit, bigger strength, and more courage to compell the woman to obey by reason, or force: and to

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the woman beautie, faire countenance, and ſweet words, to make the man obey her againe, for love. Thus each obeyeth and commandeth other, and they two together rule the houſe. The Houſe I call here, the Man, the woman, their children, their ſervants bond and free, their cattell, their houſhold-ſtuffe, and all other things, which are reckoned in their poſſeſſion, ſo long as all theſe remaine together in one; yet this cannot be called *Ariſtocratia*, but *metaphoricè*, for it is but an houſe, and little ſparke reſembling as it were that Government.

Domus, ſeu Familia.

CHAP. VII.

The firſt and naturall beginning of a Kingdome: in Greeke βασιλεία.

BUt for ſo much as it is the nature of all things, to increaſe or decreaſe: this Houſe thus increaſing and multiplying by generation, ſo that

Provining, or propagation is when a man layeth a branch of a Vine or Osier, or any other tree, into the ground, so that it taketh root, of it selfe, & may live though it be cut cleane from the first root or stocke.

that it cannot well be comprehended in one habitation, and the children waxing bigger, stronger, wiser, and thereupon naturally desirous to rule, the Father and Mother sendeth them out into couples, as it were by provining or propagation. And the child by marriage beginneth, as it were to roote towards the making of a new stock, and thereupon another House or Family. So by this propagation or provining first of one, and then of another, and so from one to another, in space of time, of many Houses was made a Street or Village; of many Streets and Villages ioined together a Citie or Borough; and when many Cities, Boroughs and Villages, were by common and mutuall consent for their conversation ruled by that one and first Father of them all, it was called a Nation or Kingdome. And this seemeth the first and most naturall beginning and source of Cities, Townes, Nations, Kingdomes, and of all civill Societies. For so long as the great Grand-father was alive and able

Pagus, Oppidum, Civitas, Regnum.

able to rule, it was unnaturall for any of his Sonnes or Off-spring, to strive with him for the superioritie, or to go about to governe, or any wise to dishonour him, from whom he had received life and being. And therefore such a one doth beare the first and naturall example of an absolute, and perfect King. For he loved them as his own Children and Nephewes, cared for them as members of his own body, providing for them as one having by long time more experience then any one, or all of them. They againe honoured him as their Father of whose body they came, obeyed him for his great wisedome and fore-cast, went to him in doubtfull cases, as to an Oracle of God, feared his curse and malediction as proceeding from Gods own mouth. He againe used nouriture: For each paine put upon them, he esteemed as laid upon himselfe.

CHAP.

CHAP. III.

The first and naturall beginning of the rule of a few of the best men, called in Greeke Ἀριστοκρατεία.

BUt when that great Grandfather was dead, the sonnes of him, and brethen amongst themselves, not having that reverence to any, nor confidence of wisedome in any one of them, nor that trust the one to the other, betweene whom (as many times it fareth with brethren) some strifes and brawlings had before arisen; to defend themselves yet from them which were Welch and Strangers, necessarily agreed among themselves to consult in common, and to beare rule for a time in order, now one, and now another: so that no one might beare alwaies the rule, nor any one bee neglected. And by this meanes, if any one failed during his yeere or time by ignorance, the next

next (being either wise of himselfe, or else by his brothers errour and fault) amended it. And in the meane while, at divers and most times when urgent necessitie did occurre, they consulted all those heads of Families together within themselves, how to demeane & order their matters best for the conservation of themselves, and each of their Families generally and particularly. Thus a few being Heads, and the chiefe of their Families, equall in Birth and Nobilitie, and not much different in riches, governed their owne Houses, and the descendents of them particularly, and consulted in common upon publike causes, agreeing also upon certaine Lawes & Orders to be kept amongst them. So the best, chiefest, and sagest did rule, and the other part had no cause to strive with them, nor had no cause nor apparance to compare with any of them, neither for age not discretion, nor for Riches, or Nobilitie. The Rulers sought each to keep and maintaine their Posteritie, as their

Sonnes

Sons and Nephewes, and ſuch as ſhould ſucceed them, and carry their names when they were dead, and ſo render them, being mortall by nature, immortall by their fame and ſucceſſion of Poſteritie: having moſt earneſt care to maintaine ſtill this their coozenage & common Family, as well againſt forrein and barbarous Nations, which were not of their Progenie, Tongue, or Religion, as againſt wild and ſavage Beaſts. This ſeemeth the naturall courſe and beginning, or Image of that rule of the fewer number, which is called of the Greeks *Ariſtocratia*, and of the Latines, *Optimatum Reſpublica*.

CHAP. XIV.

The firſt originall, or beginning of the rule of the multitude, called Politeia or Democratia.

NOw, as time bringeth an end of all things, theſe brethren being all

all dead, and their Off-ſpring increaſing daily to a great multitude, and the reverence due to the old Fathers in ſuch and ſo great number of equals failing, by reaſon of the death or doting of the Elders: each owing their merit of education apart to their Fathers and Grand-fathers, and ſo many ariſing, and ſuch equalities among them, it was not poſſible that they ſhould be content to be governed by a few. For two things being ſuch, as for the which men in ſocietie and league moſt ſtrive, that is, honour and profit, no men of free courage can bee contented to bee neglected therein: ſo that they were faine of neceſſity to come to that, that the more part ſhould beare the prize away in election of Magiſtrates and Rulers. So that either by courſe or by lot, each man in turne might be received to beare rule, and have his part of the honour, and (if any were) of the profit which came by adminiſtration of the Common-wealth. For whoſoever came of that old great Grand-

fathers

fathers race, he accounted himselfe as good of birth as any other. For service to the Common-wealth, all, or such a number had done it, as they could not be accounted few. And if a few would take upon them to usurpe over the rest, the rest conspiring together would soone bee Masters of them, and ruinate them wholly. Whereupon necessarily it came to passe, that the Common-wealth must turne and alter, as before from one to a few, so now from a few to many and the most part, each of these yet willing to save the politick body, to conserve the authoritie of their Nation, to defend themselves against all other, their strife being onely for Empire and rule, and who should doe best for the Common-wealth, whereof they should have experience made by bearing Office and being Magistrates. This I take for the first and naturall beginning of the rule of the multitude, which the Greeks called *Democratia*: the Latines, some *Respublica*, by the generall

nerall name; ſome *Populi poteſtas*; ſome *Cenſus poteſtas*, I cannot tell how Latinely.

CHAP. XV.

That the Common-wealth or Policie, muſt be according to the nature of the people.

BY this proceſſe and diſcourſe, it doth appeare that the mutations and changes of faſhions of government in Common-wealths be naturall, and doe not alwayes come of Ambition or Malice: And that according to the nature of the people, ſo the Common-wealth is to it fit and proper. And as all theſe three kinds of Common-wealths are naturall, ſo when to each partie, or eſpece and kind of the people, that is applied which beſt agreeth, like a garment to the body, or ſhooe to the foot, then the bodie Politicke is in quiet, and findeth eaſe, pleaſure and profit. But if a contrarie forme be given to a con-

contrarie manner of people, as when the ſhooe is too little or too great for the foot, it doth hurt and incumber the convenient uſe therof; ſo the free people of Nature tyrannized or ruled by one againſt their wils, were he never ſo good, either faile of courage and waxe ſervile, or never reſt untill they either deſtroy the King & them that would ſubdue them, or be deſtroyed themſelves. And againe, another ſort there is, which without being ruled by one Prince, but ſet at libertie, cannot tell what they ſhould doe, but either through inſolencie, pride, and idleneſſe, will fall to robberie, and all miſchiefe, and ſo ſcatter and diſſolve themſelves; or with fooliſh ambition and private ſtrife conſume one another, and bring themſelves to nothing. Of both theſe two wee have hiſtories enough to beare witneſſe, as the Greeks, Romanes, Samnites, Danes, Vandals, and others. Yet muſt you not think that all Common-wealths, adminiſtrations, and rulings began on this ſort,

Græci.
Romani.
Samnites.
Vandali.
Dani.
Norwegi.
Sueci.

by

by provining or propagation, as is before written: But many times after a great battell and long War, the Captaine who led a multitude of people (gathered peradventure of divers Nations and Languages) liking the place which hee hath by force conquered, tarrieth there, and beginneth a Common-wealth after this manner, & for the moſt part a Kingdome. As the Gothes and Lumbards in Italy, the Frenchmen in Gaule, the Saracens in Spaine, and part of France, the Saxons in great Brittain, which is now called England. Of which, when that one and chiefe Prince is dead, the Nobler ſort conſult among themſelves, and either chuſe another Head and King, or divide it into more Heads and Rulers: ſo did the Lumbards in Italy, & the Saxons in England; or take at the firſt a common rule and popular eſtate, as the Switzers did in their Cantons, and doe yet at this day; or elſe admit the rule of a certaine few, excluding the multitude and Com-

munaltie, as the Paduans, Veronenſes, and Venetians have accuſtomed.

CHAP. XVI.

The diviſion of the parts and perſons of the Common-wealth.

TO make all things yet cleere before, as we ſhall goe, there ariſeth another diviſion of the parts of the Common-wealth. For it is not enough to ſay that it conſiſteth of a multitude of Houſes and Families, which make Streets and Villages, and the multitude of Streets & Villages make Townes, and the multitude of Towns the Realme, and that Freemen be conſidered only in this behalfe, as Subjects and Citizens of the Common-wealth, and not Bondmen, who can beare no rule nor juriſdiction over Freemen, as they who be taken but as inſtruments, and the goods and poſſeſſions of others. In which conſideration alſo we doe reject women, as thoſe whom Nature hath

hath made to keep home, and to nourish their family and children, & not to meddle with matters abroad, nor to bear office in a Citie or Commonwealth, no more then Children and Infants: except it be in such cases as the Authoritie is annexed to the Bloud and Progenie; as the Crowne, a Dutchie, or an Earldome: for there the bloud is respected, not the Age nor the Sex. Where, by an absolute Queene, an absolute Dutchesse or Countesse, those I cal absolute, which have the name, not by being married to a King, Duke, or Earle, but by being the true, right & next Successors in the dignitie, and upon whom by right of the bloud that title is descended: These I say, have the same authoritie, although they be women or children, in that Kingdome, Dutchie, or Earledome, as they should have had if they had been men of full age. For the right & honour of the bloud, and the quietnesse and suretie of the Realme, is more to bee considered, then either the tender age as yet im-

potent to rule, or the Sexe not accuſtomed (otherwiſe) to intermeddle with publike affaires, being by common intendment underſtood, that ſuch Perſonages never doe lacke the counſell of ſuch grave and diſcreet men as bee able to ſupply all other defects. This (as I ſaid) is not enough: But the diviſion of theſe which bee participant of the Common-wealth, is one way of them that beare office, the other of them that beare none: The firſt are called Magiſtrates, the ſecond private men. Beſides, the like was among the Romans of *Patricii* & *Plebei*, the one ſtriving with the other a long time; the *Patricii* many yeeres excluding the *Plebei* from bearing rule, untill at laſt all Magiſtrates were made common betweene them: yet was there another diviſion of the Romans, into *Senators*, *Equites* and *Plebs*: the Greeks had alſo εὐγενὲς καὶ δημοτικὸς. The French have at this day, *les nobles & la populaire*, or *gentill homes & villaines*: wee in Eng-

England divide our men commonly into foure ſorts, Gentlemen, Citizens, Yeomen, Artificers and Labourers: of Gentlemen, the firſt and chiefe are the King, the Prince, Dukes, Marqueſſes, Earls, Viſcounts, Barons, and all theſe are called κατ' ἐξοχὴν, the Nobilitie, and all theſe are called Lords and Noblemen: next to theſe be Knights, Eſquires, and ſimple Gentlemen.

CHAP. XVII.

Of the firſt part of Gentlemen of England, called Nobilitas major.

DUkes, Marqueſſes, Earles, Viſcounts, and Barons, either bee created by the Prince, or come to that honour by being the eldeſt Sonnes, as higheſt and next inſucceſſion to their Parents. For the eldeſt of Dukes Sonnes, during his Fathers life, is called an Earle: an

Nobilitas major. Eldeſt Sonnes of Dukes are not Earles by birth, but Lords, and take their place above Earles, and ſo are Earles eldeſt Sons in reſpect of Barons, Eſquires of Honour or Lords.

Earles Sonne is called by the name of a Viſcount or Baron, or elſe according as the Creation is. The Creation I call the firſt donation and condition of the honour (given by the Prince for good ſervice done by him, and advancement that the Prince will beſtow upon him) which with the title of that honour, is commonly (but not alwayes) given to him and to his heires males only; the reſt of the Sonnes of the Nobilitie, by the rigor of the Law be but Eſquires; yet in common ſpeech, all Dukes, and Marqueſſes Sons, and the eldeſt Sonne of an Earle be called Lords. The which name commonly doth agree to none of lower degree then Barons, excepting ſuch onely, as bee thereunto by ſome ſpeciall office called. The Baronie or degree of Lords, doth anſwer to the dignitie of the Senators of Rome; and the title of our Nobilitie to their *Patricii*; when *Patricii* did betoken *Senatores, aut Senatorum filios. Cenſus Senatorum* was in Rome,

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at divers times divers; and in England no man is created a Baron, except hee may dispend of yeerely revenue one thousand pounds, or a thousand markes at the least; Viscounts, Earles, Marquesses, and Dukes more, according to the proportion of the degree and honour: but though by chance he or his Son have lesse, he keepeth his degree: but if they decay by excesse, and be not able to maintaine the honour (as *Senatores Romani* were *amoti Senatu*) so sometimes they are not admitted the upper House in the Parliament, although they keepe the name of Lord still.

CHAP. XVIII.

Of the second sort of Gentlemen, which may be called Nobilitas minor, *and first of Knights.*

NO man is a Knight by succession, no not the King or Prince.

And the name of Prince in England κατ' ἐξοχὴν betokeneth the eldeſt Son or Prince of Wales: although the King himſelfe, his eldeſt Sonne, and all Dukes, be called by a general name Princes. But as in France the Kings eldeſt Sonne hath the title of *Daulphin*, and he or the next Heire apparant to the Crown is *Monſire*; ſo in England the Kings eldeſt Son is called κατ' ἐξοχὴν, The Prince. Knights therefore be not borne but made; either before the battell, to incourage them the more to adventure their lives; or after the conflict, as advancement for their hardineſſe and man-hood already ſhewed: or out of the Warre, for ſome great ſervice done, or ſome good hope through the vertues which doe appeare in them. And they are made either by the King himſelfe, or by his Commiſſion and Royall Authoritie, given for the ſame purpoſe; or by his Lievtenant in the Wars, who hath his Royall and abſolute power committed to him for that time. And

that

that order ſeemeth to anſwer in part to that which the Romanes called *Equites Romanos*, differing in ſome points, and agreeing in other, as their Common-wealth and ours doe differ and agree: for never in all points one Common-wealth doth agree with another, no nor long time any one with it ſelfe. For all changeth continually to more or leſſe, and ſtill to divers and divers orders, as the diverſitie of times doe preſent occaſion, and the mutabilitie of mens wits doth invent and aſſay new wayes to reforme and amend that wherein they doe find fault. *Equites Romani*, were choſen *ex cenſu*, that is, according to their ſubſtance and riches; So be Knights in England moſt commonly, according to the yeerly revenue of their lands, being able to maintaine that eſtate: yet all they that had *Equeſtrem cenſum, non legebantur Equites*; No more are all made Knights in England that may diſpend a Knights Land or Fee, but they onely whom

the King will ſo honour. The number of *Equites* was uncertaine, and ſo it is of Knights, at the pleaſure of the Prince. *Equites Romani* had *Equum publicum*: the Knights of England have not ſo, but finde their owne Horſe themſelves in peace time, and moſt uſually in Warres.

Cenſus Equeſter was among the Romanes at divers times of divers value: but in England, whoſoever may diſpend of his free Lands fortie pounds ſterling of yeerly revenue, by an old Law of England, either at the Coronation of the King, Marriage of his Daughter, or at the dubbing of the Prince a Knight, or ſome ſuch great occaſion, may be by the King compelled to take that Order and Honour, or to pay a fine: which many, not ſo deſirous of Honour as of Riches, had rather diſburſe. Some, who for cauſes are not thought worthy of that Honour and yet have abilitie, neither be made Knights though they would, and yet pay the fine of fortie pounds ſterling;

ling at that time when this order began, which maketh now a hundred and twentie pound of currant money of England: as I have more at large declared in my Book of the diversitie of Standards, or the value of Moneys.

When the Romanes did write, *Senatus populusque Romanus*, they seemed to make but two Orders, that is, of the Senate, and of the people of Rome; and so in the name of people they contained *Equites & Plebem*: so when wee in England doe say the Lords and the Commons: the Knights, Esquires, and other Gentlemen, with Citizens, Burgesses, & Yeomen, be accounted to make the Commons. In ordaining of Lawes, the Senate of Lords of England is in one House, where the Archbishops and Bishops also be, and the King or Queene for the time being as chiefe, the Knights and all the rest of the Gentlemen, Citizens and Burgesses, which be admitted to consult upon the greatest affaires of the Realme,

Realme, bee in another Houſe by themſelves, and that is called the Houſe of the Commons, as we ſhall more cleerely deſcribe when wee ſpeak of the Parliament. Whereupon this word Knight is derived, & whether it doe betoken no more but that which *Miles* doth in Latine, which is a Souldier, might be moved as a queſtion. The word Souldier now ſeemeth rather to come of ſold and payment, and more to betoken a waged or hired man to fight, then otherwiſe; yet *Cæſar* in his Commentaries called *Soldures*, in the tongue *Gallois*, men who devoted and ſwore themſelves in a certaine band or oath one to another, and to the Captaine; which order, if the Almaines did follow, it may be, that they who were not hired, but being of the Nation, upon their own charges, and for their advancement, and by ſuch common oath or band that did follow the Warres, were (poſſibly) κατ' ἐξοχὴν called Knights or *Milites*: and now among the Almaines

maines ſome are called Launce-knights, or Souldiers of their band not hired, although at this day they bee for the moſt part hirelings. Or peradventure it may be that they which were next about the Prince, as his Guard and Servants, picked or choſen men out of the reſt, being called in the Almaine Language *Knighten*, which is as much to ſay as Servants: theſe men being found of good Service, the word afterward was taken for an Honour, and for him who maketh profeſſion of Armes. Our Language is ſo changed, that I dare make no judgement thereof. Now wee call him Knight in Engliſh, that the French calleth *Chevalier*, and the Latine *Equitem*, or *Equeſtris ordinis*.

And when any man is made a Knight, he kneeling down, is ſtricken of the Prince, with his Sword naked, upon the backe or ſhoulder, the Prince ſaying, *Sus* or *ſois Chevalier au nom de Dieu*, and (in times paſt) they added Saint *George*, and

at his arising the Prince saith, *Avaunt cer*. This is the manner of dubbing of Knights at this present, and that terme dubbing was the old terme in this point, and not Creation. At the Coronation of a King or Queene, there be Knights of the Bath made, with long and more curious Ceremonies. Knights Bannerets are made in the Field, with the Ceremonie of cutting off the point of his Standart, and making it as it were a Banner: he being before a Batcheler Knight, is now of a higher degree, allowed to display his Armes in a Banner as Barons doe. But this order is almost growne out of use in England. But howsoever one bee dubbed or made a Knight, his Wife is by and by called a Lady, as well as a Barons Wife: he himselfe is not called Lord, but hath to his name in common appellation added this syllable, Sir: as if he before were named *Thomas*, *William*, *John* or *Richard*, afterward hee is always called Sir *Thomas*, Sir *William*, Sir *John*, Sir *Richard*,

Richard, and that is the terme which men give to Knights in England. This may ſuffice at this time, to declare the Order of Knighthood: yet there is another Order of Knights in England, which bee called the Knights of the Garter. King *Edward* the Third (after he had obtained many notable victories, King *John* of France, King *James* of Scotland, being both Priſoners in the Tower of London at one time, and King *Henry* of Caſtile the Baſtard expulſed out of his Realme, and *Don Pedro* reſtored unto it by the Prince of Wales, and Duke of Aquitaine, called the Black Prince) invented a Societie of Honour, and made choice out of his own Realme and Dominions, & all Chriſtendome; & the beſt and moſt excellent renowned perſons in Vertues and Honour, he did adorne with the Title to be Knights of his Order, gave them a Garter decked with Gold, Pearle and Precious ſtones, with the buckle of gold, to weare daily on the left leg onely,

a Kirtle

a Kirtle, Gowne, Cloke, Chaperon, Coller, and other auguſt and magnificall apparell, both of ſtuffe and faſhion exquiſite and heroicall, to weare at high Feaſts, as to ſo high and Princely an Order was meet: of which Order He and his Succeſſors, Kings and Queens of England, to be the Soveraigne, and the reſt by certaine Statutes and Lawes among themſelves, be taken as brethren and fellowes in that Order, to the number of ſix and twenty. But becauſe this is rather an ornament of the Realme, then any Policie or Government thereof, I leave to ſpeake any further of it.

CHAP. XIX.

Of Eſquires.

ESCUIER or *Eſquire* (which wee call commonly Squire) is a French word, and betokeneth *Scutigerum*, or *Armigerum*, and be all thoſe

those which beare Armes (as we call them) or Armories (as they terme them in French) which to beare is a testimonie of the Nobilitie or Race from whence they doe come. These be taken for no distinct order of the Common-wealth, but do goe with the residue of the Gentlemen: save that (as I take it) they be those who beare Armes, Testimonies (as I have said) of their Race, and therefore have neither Creation nor dubbing: or else they were at first Costerels, or the Bearers of the Armes of Lords or Knights, and by that had their Name for a Dignitie and Honour, given to distinguish them from a common Souldier, called in Latine, *Gregarius miles*.

CHAP. XX.

Of Gentlemen.

GEntlemen be those whom their Bloud and Race doth make No-

Noble and knowne, Εὐγενεῖς in Greeke, the Latines call them all *Nobiles*, as the French *Nobles*. Εὐγένεια or *Nobilitas* in Latine is defined, Honour or Title given, for that the Anceſtors have beene notable in riches or vertues; or (in fewer words) old riches or proweſſe remaining in one ſtocke. Which if the Succeſſors doe keepe and follow, they be *verè Nobiles*, and Εὐγενεῖς: if they doe not, yet the fame and wealth of their Anceſtors, ſerve to cover them ſo long as it can, as a thing once gilded though it be Copper within, till the gilt be worne away. This hath his reaſon, for the Etymologie of the name ſerved the efficacie of the word: *Gens* in Latine betokeneth the race and ſirname, ſo the *Romans* had *Cornelios*, *Sergios*, *Appios*, *Fabios* *Æmilios*, *Piſones*, *Julios*, *Brutos*, *Valerios*, of which who were *Agnati*, and therefore kept the name, were alſo *Gentiles*, and retaining the memory of the glory of their Progenitours fame,

were

were Gentlemen of that or that race. This matter made a great ſtrife among the *Romans*, when thoſe which were *novi homines*, were more allowed for their vertues new and newly ſhowne, then the old ſmell of ancient race, newly defaced by the evill life of their Nephewes and Deſcendents, could make the other to be. Thus the *Ciceroues*, *Catones*, and *Marii*, had much adoe with thoſe Ancients: and therefore ſaid *Juvenal*:

Malo pater tibi ſit Therſites, *dummodo tuſis*
Æacidi *ſimilis*, Vulcaniaque *arma capeſſas*:
Quàm te Therſiti *ſimilem produ-cat* Achilles.

But as other Common-wealths were faine to doe, ſo muſt all Princes neceſſarily follow: that is, where vertue is, to honour it. And although vertue of ancient Race bee eaſier to be obtained, aſwell by the example of

of the Progenitors, which incourageth, as alſo through habilitie of education and bringing up, which enableth; and laſtly, the enraced love of tenants and neighbours, to ſuch Noblemen & Gentlemen, of whom they hold, and by whom they doe dwell, which pricketh forward to enſue in their Fathers ſteps: So if all this doe faile (as it were great pitie it ſhould) yet ſuch is the nature of all humane things, and ſo the world is ſubject to mutabilitie, that it doth many times faile: but when it doth, the Prince and Common-wealth have the ſame power that their Predeceſſours had; and as the Husbandman hath to plant a new tree where the old faileth, ſo hath the Prince to honour vertue where he doth finde it; to make Gentlemen, Eſquires, Knights, Barons, Earles, Marqueſſes and Dukes, where he ſeeth vertue able to beare that honour, or merits and deſerves it, and ſo it hath alwaies beene uſed among us. But ordinarily the King doth only make

Knights

Knights, and create Barons or high degrees: for as for Gentlemen, they be made good cheape in *England*. For whosoever studieth in the Lawes of the Realme, who studieth in the Universities, who professeth liberall Sciences; & to be short, who can live idlely, and without manuall labour, and will beare the port, charge and countenance of a Gentleman, hee shall be called Master (for that is the Title which men give to Esquires, and other Gentlemen) and shall bee taken for a Gentleman. For true it is with us as he said, *Tanti eris aliis quanti tibi fueris:* And (if need be) a King of Heralds shall also give him for money Armes newly made and invented, the title whereof shall pretend to have beene found by the said Herald, in perusing and veiwing of old Registers, where his Ancestors in times past had been recorded to beare the same. Or if hee will do it more truly, and of better faith, he will write that for the merits of that man, and certaine qualities, which

which he doth ſee in him, and for ſundry noble Acts which he hath performed: hee by the authority which he hath, as King of Heralds and Armes, giveth to him and his heires, theſe and theſe Armes: which being done, I think he may be called a Squire, for he beareth ever after thoſe Armes. Such then are called ſometime in a ſcorne, Gentlemen of the firſt head.

Chap. XXI.

Whether the manner of England, in making Gentlemen ſo eaſily, is to be allowed.

A Man may make doubt and queſtion, whether this manner of making Gentlemen is to bee allowed or no, and for my part I am of that opinion, that it is not amiſſe: For firſt the Prince loſeth nothing by it, as he ſhould doe if it were in *France*: for the Yeoman or Husbandman is no more ſubject to taile or taxe

taxe in *England*, then the Gentleman; no, in every payment to the King, the Gentleman is more charged, which he beareth the gladlier, and dareth not gain-say, for to save and keep his honour and reputation. In any Shew or Muster, or other particular charge of the Towne where he is, hee must open his purse wider, and augment his portion above others, or else he doth diminish his reputation. As for their outward shew, a Gentleman (if he will be so accounted) must go like a Gentleman, a Yeoman like a Yeoman, and a Rascall like a Rascall: and if he be called to the Warres, hee must and will (whatsoever it cost him) array himselfe, and arme him according to the vocation which he pretendeth: he must shew also a more manly courage, and tokens of better education, higher stomacke, and bountifuller liberalitie then others, and keep about him idle Servants, who shall doe nothing but wait upon him. So that no man hath hurt by

it but hee himſelfe, who hereby perchance will beare a bigger ſaile then he is able to maintaine. For as touching the policie and government of the Common-wealth, it is not thoſe that have to doe with it, which will magnifie themſelves, and goe in higher Buskins then their eſtate will beare: but they which are to be appointed, are perſons tried and well knowne, as ſhall be declared hereafter.

Chap. XXII.

Of Citizens and Burgeſſes.

NExt Gentlemen be appointed Citizens and Burgeſſes, ſuch as not onely be free, and received as Officers within the Cities but alſo bee of ſome ſubſtance to beare the charges. But theſe Citizens and Burgeſſes bee to ſerve the Commonwealth, in their Cities & Boroughs, or in Corporate Townes where they dwell.

dwell. Generally in the Shires they be of none account, ſave only in the common aſſembly of the Realme, to make Lawes, which is called the Parliament. The ancient Cities appoint foure, and each Borough two, to have voices in it, and to give their conſent or diſſent, in the name of the Citie or Borough for which they be appointed.

CHAP. XXIII.

Of Yeomen.

THoſe whom wee call Yeomen, next unto the Nobilitie, Knights and Squires, have the greateſt charge and doings in the Common-wealth, or rather are more travelled to ſerve in it then all the reſt: as ſhall appeare hereafter. I call him a Yeoman, whom our Lawes do call *Legalem hominem*, a word familiar in Writs and Enqueſts, which is a free Engliſh man borne, and may di-

ſpend of his own free Land in yeerly revenue to the ſum of forty ſhillings ſterling. This maketh (if the juſt value were taken now to the proportion of monies) ſixe pounds of our currant money at this preſent.

This ſort of people confeſſe themſelves to be no Gentlemen, but give the honour to all which bee, or take upon them to be Gentlemen, & yet have a certaine preheminence, and more eſtimation then Labourers and Artificers, and commonly live wealthily, keepe good houſes, and doe their buſineſſe and travell to acquire riches: theſe be (for the moſt part) Farmours unto Gentlemen, which with grazing, frequenting of Markets, and keeping Servants not idlely, as the Gentleman doth, but ſuch as get both their owne living and part of their Maſters, and by theſe meanes do come to ſuch wealth, that they are able and daily doe buy the Lands of unthriftie Gentlemen, and after ſetting their Sonnes to the

School

Schoole at the Universities, to the Lawes of the Realme, or otherwise leaving them sufficient Lands whereon they may live without labour, do make their said Sonnes by those meanes Gentlemen: These be not called Masters, for that (as I said) pertaineth to Gentlemen only. But to their sirnames men adde Goodman: as if the sirname bee *Luter*, *Finch*, *White*, *Browne*, they are called Goodman *Luter*, Goodman *Finch*, Goodman *White*, Goodman *Browne*, amongst their Neighbours. I meane not in matters of importance, or in Law: But in matters of Law and for distinction, if one were a Knight, they would write him (for examples sake) Sir *John Finch* Knight; so if hee bee an Esquire, *John Finch* Esquire or Gentleman, if he be no Gentleman, *John Finch* Yeoman. For amongst the Gentlemen, they which claime no higher degree, and yet be to be exempted out of the number of the lowest sort thereof, bee written Es-

quires : ſo amongſt the Husband-men, Labourers, the loweſt and raſcall ſort of the people, ſuch as bee exempted out of the number of the raſcalitie of the popular, be called and written Yeomen, as in the degree next unto Gentlemen. Theſe are they which old *Cato* calleth *Aratores*, and *optimos cives in Republica*; and ſuch as of whom the Writers of Common-wealths prayſe to have many in it. *Ariſtotle* namely reciteth μοθάκας μεσοπίσιμα : theſe tend their owne buſineſſe, come not to meddle in publike matters & judgements, but when they are called, and glad when they are delivered thereof, are obedient to the Gentlemen & Rulers, and in Warre can abide travell and labour, as men uſed to fight for their Lords of whom they hold their Lands, for their Wives and Children, for their Country and Nation, for praiſe and honour againſt they come home, and to have the love of their Lord and his children, to be continued towards them

and

and their children, which have adventured their children, which have adventured their lives for and with him and his. These are they which in the old world gat that honour to *England*; not that either for wit, conduction, or for power they are or were to be compared to the Gentlemen, but because they be so many in number, so obedient at the Lords call, so strong of body, so hardy to endure paine, so courageous to adventure with their Lords or Captaine, going with, or before them; for else they be not hastie, nor never were, as making no profession of knowledge of warre.

These were the good Archers in times past, and the stable troupe of Foormen that affraid all *France*, that would rather die all, then once abandon the Knight or Gentleman their Captaine, who in those dayes commonly was their Lord, & whose Tenants they were, readie (besides perpetuall shame) to be in danger of undoing themselves, and all theirs,

if they ſhould ſhew any ſigne of cowardiſe, or abandon the Lord, Knight, or Gentleman of whom they held their living. And this they have amongſt them from their foreſathers, told one to another The Gentlemen of *France*, and the Yeomen of *England*, are renowned, becauſe in battell of Horſemen, *France* was many times too good for us, as wee againe alway for them on foot. And Gentlemen for the moſt part be men at Armes and Horſemen, and Yeomen commonly on foot: howſoever it was, yet the Gentlemen had alwayes the conduction of the Yeomen, and as their Captaines were either a foot, or upon a little Nagge with them, & the Kings of *England* in foughten battels, remayning alwayes among the Footmen, as the *French* Kings among their Horſemen. Each Prince thereby, as a man may gheſſe, did ſhew where hee thought his ſtrength did conſiſt. What a Yeoman is I have declared, but from whence the word is deri-

ved

ved it is hard to say: it cannot bee thought that Yeoman should be said of a young man, for commonly wee doe not call any a Yeoman till he be married, and have children, and, as it were, have some authority among his Neighbours. Yonker in Low Dutch betokeneth a meane Gentleman, or a gay fellow. Possibly our Yeomen, not being so bold as to name themselves Gentlemen, when they came home, were content when they had heard by frequentation with Low Dutchmen, of some small Gentleman (but yet that would bee counted so) to bee called amongst them, Yonkerman, they calling so in Warres by mockage or in sport the one another, when they came home, Yonkerman, and so Yeoman: which word now signifieth among us, a man well at ease, and having honestly to live, yet not a Gentleman: whatsoever that word Yonkerman, young-man, or Yeoman doth more or lesse signifie to the Dutchmen.

German in the *Saxon* is a married man, and hereof commeth our Yeoman, for after marriage men are accounted setled members in the Commonwealth, but not before.

A *Yonker* commeth of yong heire which is a sonne and heire to a Gentleman, or a yong Gentleman.

Chap. XXIIII.

Of the fourth sort of men, which doe not rule.

THe fourth sort or classe amongst us, is of those which the old Romans called *capite sensu proletarii*, or *operarii*, day labourers, poor Husbandmen; yea, Merchants or Retailers, which have no free Land, Copyholders, and all Artificers, as Tailers, Shoomakers, Carpenters, Brickmakers, Brick-layers, Masons, &c. These have no voice nor authoritie in our Common-wealth, and no account is made of them, but only to be ruled, and not to rule other. And yet they bee not altogether neglected: For in Cities and Corporate Townes, for default of Yeomen, Enquests and Juries are impannelled of such manner of people. And in Villages they bee commonly made Church-wardens, Ale-cunners, and many times Constables, which Office toucheth more the Common-wealth, and at the first was not imployed

ployed upon ſuch low and baſe perſons. Wherefore generally to ſpeak of the Common-wealth, or Policie of *England*, it is governed, adminiſtred, and managed by three ſorts of perſons; the Prince, Monarch, and head Governour, which is called the King, or if the Crowne fall to a Woman, the Queene abſolute, as I have heretofore ſaid.; in whoſe name and by whoſe authoritie all things are adminiſtred. The Gentlemen, which bee divided into two parts, the Baronie or Eſtate of Lords, containing Barons and all that bee above the degree of a Baron (as I have declared before:) and thoſe which be no Lords, as Knights, Eſquires, and ſimple Gentlemen.

The third and laſt ſort of perſons, is named the Yeomanry. Each of theſe hath his part and adminiſtration in judgements, corrections of defaults, in election of Offices, in appointing and collection of Tributes and Subſidies, or in making Lawes; as ſhall appeare hereafter.

THE SECOND BOOKE.

CHAP. I.

The diuiſion and definition of the Lawes of this Realme in generall.

THe Lawes of *England* conſiſt in two points, { Judgment and Practice.

In Judgment are conſidered the { Perſons. Place. Matter, and Manner.

The perſons in judgement are the { Judges in the Courts. Sergeants and Counſellours.

In

In practice are considered, the { Persons, and their Office.

The persons are, { Protonotaries, Sollicitors, and Atturneies.

Their office is to prepare the matter, and to make it ready for the Judges to determine.

The Protonotaries are the Clerks in the Court, which doe record the matters hanging in judgement, and doe frame the pleading, enter the Rules and Orders of the Court, the Verdicts and Judgements given in the same.

Sollicitors are such, as being learned in the Lawes, and informed of their Masters Cause, doe informe and instruct the Counsellors in the same.

Atturneies are such as by experience have learned and do know the orders and manner of proceeding in every Court where they serve, and doe

doe purchaſe out Writs and Proceſſe belonging to their Clients Cauſe: They ſee to his Suits, that he be not hindred by negligence: They pay the fees belonging to the Courts, and prepare the Cauſe for judgement.

The places for judgement are the Courts where ſentence is given, and the Lawes made: as the Parliament, Chancery, Kings Bench, the Common Pleas, the Exchequer, the Court of Wards, the Starre Chamber, the Court of Requeſts, and the Dutchie Court of Lancaſter.

The matter of the Law is { Juſtice, and Equity.

The manner of their ſeverall proceedings followeth.

CHAP.

Chap. II.

Of the Parliament, and the authoritie thereof.

THe moſt high & abſolute power of the Realme of *England* conſiſteth in the Parliament. For as in Warre where the King himſelfe in perſon, the Nobilitie, the reſt of the Gentilitie, and the Yeomanrie are, is the force and power of *England*: So in peace and conſultation where the Prince is to give life, and the laſt and higheſt commandement; the Baronie or Noblitie for the higher; the Knights, Eſquires, Gentlemen and Commons for the lower part of the Common-wealth; the Biſhops for the Clergie be preſent to advertiſe, conſult and ſhew what is good and neceſſary for the Common-wealth, and to conſult together; and upon mature deliberation, every Bill or Law being thrice read and diſputed upon in either Houſe, the other two parts

parts, first each a part, and after the Prince himselfe in presence of both the parties, doth consent unto and alloweth. That is, the Princes and whole Realmes Deed: whereupon justly no man can complaine, but must accommodate himselfe to finde it good and obey it.

That which is done by this consent is called firme, stable and *sanctum*, and is taken for Law. The Parliament abrogateth old Lawes, maketh new, giveth order for things past, and for things hereafter to be followed, changeth right and possessions of private men, legitimateth Bastards, establisheth formes of Religion, altereth Weights and Measures, giveth forme of succession to the Crowne, defineth of doubtfull Rights, whereof is no Law alreadie made, appointeth Subsidies, Tailes, Taxes, and Impositions, giveth most free pardons and absolutions, restoreth in Bloud and Name, as the highest Court condemneth or absolveth them whom the Prince will put

to

to triall. And to be ſhort, all that ever the people of *Rome* might doe, either *Centuriatis Comitiis* or *Tributis*, the ſame may be done by the Parliament of *England*; which repreſenteth, and hath the power of the whole Realm, both the head and bodie. For every Engliſhman is intended to be there preſent, either in perſon, or by procuration and atturny, of what preheminence, ſtate, dignitie or qualitie ſoever hee be, from the Prince (be he King or Queene) to the loweſt perſon of *England*. And the conſent of the Parliament, is taken to be every mans conſent.

Alias, Tributitis.

The Judges in Parliament are, the King or Queens Majeſtie; the Lords Temporall and Spirituall; the Commons, repreſented by the Knights & Burgeſſes of every Shire & Borough Towne. Theſe all, or the greater part of them, and that with the conſent of the Prince for the time being, muſt agree to the making of Lawes.

The Officers in Parliament are, the Speakers, two Clarkes, the one for the

the Higher Houſe, the other for the Lower; and Committees.

The Speaker is he that doth commend and preferre the Bils exhibited into the Parliament, and is the Mouth of the Parliament. Hee is commonly appointed by the King or Queene, though accepted by the aſſent of the Houſe.

The Clarks are the keepers of the Parliament Rolls and Records, and of the Statutes made, and have the cuſtodie of the private Statutes not printed.

The Committees are ſuch as either the Lords in the higher Houſe, or Burgeſſes in the Lower Houſe, doe chooſe to frame the Lawes upon ſuch Bils as are agreed upon, and afterward to bee ratified by the ſame Houſes.

CHAP.

CHAP. III.

The forme of holding the Parliament.

THe Prince ſendeth forth his Reſcripts or Writs to every Duke, Marqueſſe, Baron, and every other Lord Temporall or Spirituall, who hath voyce in the Parliament, to be at his great Councell of Parliament ſuch a day (the ſpace from the date of the Writ is commonly at the leaſt forty dayes) he ſendeth alſo Writs to the Sheriffes of every Shire, to admoniſh the whole Shire to chooſe two Knights of the Parliament in the name of the Shire, to heare and reaſon, and to give their advice and conſent in the name of the Shire: and to be preſent at that day: likewiſe to every Citie and Towne, which of ancient time hath been wont to find Burgeſſes of the Parliament, ſo to make election, that they might be preſent there at the firſt day of the Par-

Parliament. The Knights of the Shire be choſen by all the Gentlemen and Yeomen of the Shire, preſent at the day aſſigned for the election: the voice of any abſent can be counted for none. Yeomen I call here (as before) that may diſpend at the leaſt forty ſhillings of yeerely rent of free Land of his own. Theſe meeting at one day, the two who have the more of their voices, be choſen Knights of the Shire for that Parliament; likewiſe by the plurality of the voices of the Citizens & Burgeſſes, be the Burgeſſes elected. The firſt day of the Parliament, the Prince and all the Lords in their Robes of Parliament do meet in the Higher Houſe, where, after Prayers made, they that be preſent are written, and they that be abſent upon ſickneſſe, or ſome other reaſonable cauſe (which the Prince will allow) doe conſtitute under their hand and ſeale, ſome one of thoſe who be preſent, as their Procurer or Atturney, to give voice for them, ſo that by pre-

preſence, or Atturney, and Proxie they be all there, all the Princes and Barons, and all Archbiſhops and Biſhops, and (when Abbots were) ſo many Abbots as had voice in Parliament. The place, where the Aſſembly is, is richly tapeſſed and hanged; a Princely and Royall Throne (as appertaineth to a King) ſet in the middeſt of the higher place thereof. Next under the Prince, ſitteth the Chancellour, who is the Voyce and Oratour of the Prince. On the one ſide of that Houſe or Chamber, ſitteth the Archbiſhops and Biſhops, each in his ranke; on the other ſide, the Dukes and Barons.

In the midſt thereof upon Wool-ſackes ſitteth the Judges of the Realme, the Maſter of the Rolls, and the Secretaries of Eſtate. But theſe that ſit on the Wool-ſackes have no voyce in the Houſe, but onely ſit there to anſwer their knowledge in the Law, when they be asked, if any doubt ariſe among the Lords: The Secretaries doe anſwer of ſuch letters

ters or things paſſed in counſell, whereof they have the cuſtodie and knowledge: and this is called the upper Houſe, whoſe conſent and diſſent is given by each man ſeverally, and by himſelfe, firſt, for himſelfe, and then ſeverally for ſo many as he hath Letters and Proxies, when it commeth to the queſtion, ſaying only, Content, or Not content, without further reaſoning or replying. In this meane time the Knights of the Shires, and Burgeſſes of Parliament (for ſo they are called that have voyce in Parliament, and are choſen (as I have ſaid before) to the number betwixt three and foure hundred) are called by ſuch as it pleaſeth the Prince to appoint, into an other great Houſe or Chamber by name, to which they anſwer: and declaring for what Shire or Towne they anſwer, then they are willed to chooſe an able and diſcreet man, to be as it were the Mouth of them all, and to ſpeake for, and in the name of them, and to preſent him ſo choſen

ſen by them to the Prince: which done they comming all with him to a Barre, which is at the neither end of the upper Houſe, there hee firſt prayſeth the Prince, then maketh his excuſe of inabilitie, and prayeth the Prince that he would command the Commons to chooſe another. The Chancellour in the Prince's name doth ſo much declare him able, as he did declare himſelfe unable, and thanketh the Commons for chuſing ſo wiſe, diſcreet, and eloquent a man, and willeth them to goe and conſult of Lawes for the Common-wealth. Then the Speaker maketh certaine requeſts to the Prince in the Commons Name:

Firſt, that his Majeſtie would bee content that they may uſe and enjoy all their Liberties and Priviledges that the common houſe was wont to enjoy.

Secondly, that they may frankly and freely ſay their minds, in diſputing of ſuch matters as may come in queſtion, and that without offence to his Majeſtie. Third-

Thirdly, if any ſhould chance of that lower Houſe to offend, or not to doe or ſay as ſhould become him, or if any ſhould offend any of them being called to that his Highnes Court, that they themſelves might (according to the ancient cuſtome) have the puniſhment of them.

Fourthly, that if there come any doubt, whereupon they ſhal deſire to have the advice or conference with his Majeſtie, or with any of the Lords, they might doe it: all which he promiſeth in the Commons names, that they ſhall not abuſe, but have ſuch regard as moſt faithfull, true, and loving Subjects ought to have to their Prince.

The Chancellour anſwereth in the Princes name, as appertaineth. And this is all that is done for one day, and ſometime for two. Beſides the Chancellour, there is one in the upper Houſe, who is called Clarke of the Parliament, who readeth the Bils. For all that commeth in conſultation either in the upper Houſe

or

or in the nether Houſe, is put in writing firſt in paper; which being once read, he that will, riſeth up and ſpeaketh with it or againſt it: and ſo one after another, ſo long as they ſhall thinke good. That done, they goe to another, and ſo another Bill. After it hath beene once or twice read, and doth appear that it is ſomewhat liked as reaſonable, with ſuch amendment in words, and peradventure ſome ſentences, as by diſputation ſeemeth to be amended; in the upper Houſe the Chancellour asketh if they will have it ingroſſed, that is to ſay, put into parchment: which done, and read the third time, and that eſt-ſoones, if any be diſpoſed to object, diſputed again among them, the Chancellour asketh if they will goe to the queſtion: and if they agree to goe to the queſtion, then he ſaith, Here is ſuch a Law or Act concerning ſuch a matter, which hath been thrice read here in this Houſe, are yee content that it be enacted or no? If the Not contents be moe, then the

the Bill is dashed, that is to say, the Law is annihilated, and goeth no farther. If the Contents be the moe, then the Clark writeth underneath: *Soit baille aux commons.*

And so when they see time, they send such Bils as they have approved, by two or three of those which doe sit on the Wool-sacks, to the Commons: who asking licence and comming into the House, with due reverence, saith to the Speaker: Master Speaker, my Lords of the upper House have passed among them and thinke good, that there should bee enacted by Parliament such an Act, and such an Act; and so readeth the titles of that Act or Acts. They pray you to consider of them, and shew them your advice; which done they goe their way. They being gone, and the doore againe shut, the Speaker rehearseth to the House what they said. And if they be not busie disputing at that time another Bill, he asketh them straight way if they

will have that Bill, or (if there bee moe) one of them.

In like manner in the Lower Houſe the Speaker ſitting in a ſeat or chaire for that purpoſe ſomwhat higher, that he may ſee and be ſeene of them all, hath before him, in a lower ſeat, his Clarke who readeth ſuch Bils as bee firſt propounded in the Lower Houſe, or bee ſent downe from the Lords. For in that point each Houſe hath equall authoritie, to propound what they thinke meet, either for the abrogating of ſome Law made before, or for making of a new. All Bils be thrice, in three divers dayes, read and diſputed upon, before they come to the queſtion. In the diſputing is a marvellous good order uſed in the Lower Houſe. He that ſtandeth up bare-headed, is to be underſtood, that he will ſpeak to the Bill. If moe ſtand up, who that is firſt judged to ariſe, is firſt heard; though the one doe prayſe the Law, the other diſſwade it, yet there is no altercation:

For

For every man ſpeaketh as to the Speaker, not as one to another; for that is againſt the order of the Houſe. It is alſo taken againſt the order, to name him whom yee do confute, but by circumlocution, as he that ſpeaketh with the Bill, or he that ſpake againſt the Bill, and gave this and this reaſon. And ſo with perpetuall Oration not with altercation, hee goeth through till hee have made an end. He that once hath ſpoken in a Bill, though he be confuted ſtraight, that day may not reply, no though he would change his opinion, So that to one Bill in one day, one may not in that Houſe ſpeake twiſe, for elſe one or two with altercation would ſpend all the time. The next day he may, but then alſo but once.

No reviling or nipping words muſt be uſed. For then all the Houſe will cry, it is againſt the order: and if any ſpeake unreverently or ſeditiouſly againſt the Prince or the privie Councell, I have ſeene them not

onely interrupted, but it hath beene mooved after to the Houſe, and they have ſent them to the Tower. So that in ſuch a multitude and in ſuch diverſitie of Minds and Opinions, there is the greateſt modeſty and temperance of ſpeech that can be uſed. Nevertheleſſe, with much doulce and gentle termes, they make their reaſons as violent and as vehement the one againſt the other as they may ordinarily, except it be for urgent cauſes, and haſting of time. At the afternoon they keep no Parliament. The Speaker hath no voice in the Houſe, nor they will not ſuffer him to ſpeake in any Bill to move or diſſwade it. But when any Bill is read, the Speakers Office is, as briefly and as plainly as he may, to declare the effect thereof to the Houſe. If the Commons doe aſſent to ſuch Bils as bee ſent to them firſt agreed upon from the Lords, thus ſubſcribed, *Les commons ont aſſentus*, ſo if the Lords doe agree to ſuch Bils as bee firſt agreed upon by the Commons, they

ſend

ſend them downe to the Speaker thus ſubſcribed, *Les Seigneurs ont aſſentu.* If they cannot agree, the two Houſes (for every Bill from whenceſoever it doth come, is thrice read in each of the Houſes) if it bee underſtood that there is any ſticking, ſomtimes the Lords to the Commons, ſomtimes the Commons to the Lords doe require that certaine of each Houſe may meet together, and ſo each part to be enformed of others meaning, and this is alwayes granted. After which meeting for the moſt part, not alwayes, either part agrees to others Bils.

In the upper Houſe they give their aſſent and diſſent, each man ſeverally and by himſelfe, firſt, for himſelfe, and then for ſo many as hee hath proxie. When the Chancellour hath demanded of them, whether they will go to the queſtion after the Bill hath beene thrice read, they ſaying only, Content, or Not content, without further reaſoning or replying: and as the more number doth agree,

ſo it is agreed on, or daſhed.

In the neither Houſe none of them that is elected, either Knight or Burgeſſe can give his voice to another, nor his conſent or diſſent by proxie. The more part of them that be preſent only maketh the conſent or diſſent. After the Bill hath beene twice read, and then ingroſſed, and eſtſoones read and diſputed on enough, as is thought, the Speaker asketh if they will goe to the queſtion: And if they agree, he holdeth the Bill up in his hand, and ſaith: As many as will have this Bill goe forward, which is concerning ſuch a matter; ſay yea. Then they which allow the Bill cry yea, and as many as will not, ſay no: as the cry of yea, or no is bigger, ſo the Bill is allowed or daſhed. If it be a doubt which cry is bigger, they divide the Houſe, the Speaker ſaying, as many as doe allow the Bill goe down with the Bill, and as many as doe not, ſit ſtill. So they divide themſelves, and being ſo divided they are numbred who made the

more

more part, and ſo the Bill doth ſpeed. It chanceth ſometime that ſome part of the Bill is allowed, ſome other part hath much controverſie and doubt made of it: and it is thought, if it were amended, it would goe forward. Then they chooſe certaine *Committees* of them who have ſpoken with the Bill and againſt it, to amend it, and bring it againe ſo amended, as they amongſt them ſhall thinke meet: and this is before it is ingroſſed; yea, and ſometime after. But the agreement of theſe *Committees* is no prejudice to the houſe. For at the laſt queſtion they will either accept it or daſh it, as it ſhall ſeeme good, notwithſtanding that whatſoever the *Committees* have done.

Thus no Bill is an Act of Parliament, Ordinance, or Edict of Law untill both the houſes ſeverally have agreed unto it after the order aforeſaid, no nor then neither. But the laſt day of that Parliament or Seſſion, the Prince commeth in perſon in his Parliament Robes, and ſitteth in his

ſtate: all the upper Houſe ſitteth about the Prince in their ſtates and order in their Robes. The Speaker with all the common Houſe cõmeth to the Barre, and there after thankſgiving firſt in the Lords Name by the Chancellour, &c. and in the Commons Name by the Speaker to the Prince, for that he hath ſo great care of the good government of his people, and for calling them together to adviſe of ſuch things as ſhould be for the reformation, eſtabliſhing, and ornament of the Common-wealth: the Chancellour, in the Princes Name, giveth thanks to the Lords and Commons for their pains and travels taken, which hee ſaith the Prince will remember and recompence when time and occaſion ſhall ſerve, and that he for his part is ready to declare his pleaſure concerning their proceedings, whereby the ſame may have perfect life and accompliſhment by his Princely authoritie, and ſo have the whole conſent of the Realme. Then one reads

the

the titles of every Act which hath paſſed at that Seſſion, but onely in this faſhion: An Act concerning ſuch a thing, &c. It is marked there what the Prince doth allow, and to ſuch he ſaith: *Le Roy*, or *la Royne le veult*. And thoſe be taken now as perfect Lawes and Ordinances of the Realme of *England*, and none other; and, as ſhortly as may be, put in print, except it be ſome private Caſe or Law made for the benefit or prejudice of ſome private man, which the *Romanes* were wont to call *Privilegia*. Theſe be onely exemplified under the Seale of the Parliament, and for the moſt part not printed. To thoſe which the Prince liketh not, he anſwereth, *Le Roy*, or *la Royne ſadviſera*, and thoſe be accounted utterly daſhed and of none effect.

This is the order and forme of the higheſt and moſt authenticall Court of *England*, by vertue whereof all thoſe things be eſtabliſhed whereof I ſpake before, and no other meanes accounted availeable to make any

new forfeiture of life, member, or Lands of any Engliſhman, where there was no Law ordained for it before. Now let us ſpeake of the ſaid parts when they be ſeverall.

Chap. IV.

Of the Monarch, King, or Queene of England.

THe Prince whom I now call (as I have often before) the Monarch of *England*, King, or Queene, hath abſolutely in his power the authoritie of Warre and Peace, to defie what Prince it ſhall pleaſe him, and to bid him Warre, and againe to reconcile himſelfe and enter into League or Trnce with him at his pleaſure, or the advice onely of his privie Councell. His privie Councell are choſen all at the Princes pleaſure out of the Nobilitie or Baronie, and of the Knights and Eſquires, ſuch and ſo many as he ſhall thinke good, who

who doe consult daily, or when need is, of the waighty matters of the Realme, to give therein to their Prince the best advice they can. The Prince doth participate to them all, or so many of them as he shall think good, such Legations and Messages as come from forreigne Princes, such Letters or Occurrents as bee sent to himselfe or to his Secretaries, and keepeth so many Ambassages and Letters sent unto him secret as hee will, although these have a particular oath of a Counsellour touching faith and secrets administred unto them when they be first admitted into that company. So that herein the Kingdome of *England* is farre more absolute then either the Dukedome of *Venice* is, or the Kingdom of the *Lacedemonians* was. In warre time, and in the field the Prince hath also absolute power, so that his word is a law, he may put to death, or to other bodily punishment, whom hee shall thinke so to deserve, without processe of Law or forme of judgement:

This

This hath been ſometime uſed within the Realme before any open war, in ſudden inſurrections and rebellions, but that not allowed of wiſe and grave men, who in that their judgement had conſideration of the conſequence and example, as much as of the preſent neceſſitie, eſpecially when by any means the puniſhment might have beene done by order of Law. This abſolute power is called Martiall Law, and ever was, and neceſſarily muſt be uſed in all Campes and Hoſts of men, where the time nor place do ſuffer the tarriance of pleading and proceſſe, be it never ſo ſhort, and the important neceſſitie requireth ſpeedy execution, that with more awe the Souldiers might be kept in more ſtraight obedience, without which never Captaine can doe any thing vaileable in the wars.

The Prince uſeth alſo abſolute power in crying and decreeing the money of the Realme by his Proclamation onely. The mony is alwayes ſtamped with the Princes Image and title.

title. The forme, fashion, manner weight, fineneſſe & baſeneſſe thereof, is at the diſcretion of the Prince. For whom ſhould the people truſt more in that matter then their Prince, ſeeing the Coine is only to certifie the goodneſſe of the metall and the weight, which is affirmed by the Princes Image and marke? But if the Prince will deceive them, and give them Copper for Silver or Gold, or inhance his Coine more then it is worth, he is deceived by his Subjects; for in the ſame ſort they pay the Prince his Rents and Cuſtomes: and in time they will make him pay rateably or more for meat, drinke, and victuals for him and his, and for their labour; which experience doth teach us now in our daies to be done in all Regions. For there ever hath beene and ever will be a certaine proportion betweene the ſcarcitie and plentie of other things, with Gold and Silver. For all other Meaſures and Weights, aſwell of dry things as of wet, they have ac-

accuſtomed to be eſtabliſhed or altered by the Parliament, and not the Princes Proclamation onely.

The Prince uſeth alſo to diſpence with Lawes made, whereas equitie requireth a moderation to bee had, and with paines for tranſgreſſing of Lawes, where the paine of the Law is applied onely to the Prince. But where the forfeit (as in popular actions it chanceth many times) is part to the Prince, the other part to the Declarator, Detector or Informer, there the Prince doth diſpence for his own part onely. Where the criminall action is intended by inquiſition (that manner is called with us at the Prince's ſute) the Prince giveth abſolution or pardon, yet with a clauſe, *modo ſtet rectus in curia*, that is to ſay, that no man object againſt the Offender. Whereby notwithſtanding that he hath the Princes pardon if the perſon offended will take upon him the accuſation (which in our Language is called the Appeale) in caſes where it lieth, the

the Princes pardon doth not ſerve the Offender.

The Prince giveth all the chiefe and higheſt Offices or Magiſtracies of the Realme, be it of Judgement or Dignitie, Temporall or Spirituall, and hath the tenths and firſt fruits of all Eccleſiaſticall promotions, except in the Univerſities, and certaine Colledges, which bee exempt.

All Writs, Executions, and Commandements, be done in the Princes Name. We doe ſay in *England*, the life and member of the Kings ſubject are the Kings only, that is to ſay, no man hath *hault* nor *moyenne* Juſtice but the King, nor can hold plea thereof. And therefore all thoſe Pleas which touch the life or mutilation of man be called Pleas of the Crown, nor can be done in the name of any inferiour perſon then hee or ſhe that holdeth the Crown of *England*. And likewiſe no man can give pardon thereof but the Prince only: although in times paſt there were cer-

certaine Countie Palatines, as *Chester*, *Durham*, and *Elie*, which were *hault* Justicers, and Writs went in their Name, as also some Lord Marches of *Wales*, which claimed like priviledge: all these are now worne away. The supreme Justice is done in the Kings Name, and by his authority only.

The Prince hath the Wardship and first Marriage of all those that hold Land of him in chiefe. And also the government of all fooles naturall, or such as be made by adventure of sickness, and so continue if they be landed. This being once grounded by Act of Parliament (although some inconvenience hath bin thought to grow thereof, and since that time it hath been thought very unreasonable) yet once annexed to the Crown, who ought to go about to take the Club out of *Hercules* hand? And being governed justly and rightly, I see not so much inconvenience in it, as some men would make of it: Divers other rights and pre-

preheminences the Prince hath, which he called Prerogatives Royall, or the Prerogative of the King, which bee declared particularly in the Books of the Common Lawes of *England*.

To be ſhort, the Prince is the life, the head, and the authoritie of all things that be done in the Realme of *England*. And to no Prince is done more honour and reverence, then to the King and Queene of *England*: no man ſpeaketh to the Prince, nor ſerveth at the table, but in adoration, and kneeling: all perſons of the Realme be bare headed before him: in ſo much that in the Chamber of Preſence where the Cloth of Eſtate is ſet, no man dare walk; yea though the Prince be not there, no man dare tarry there but bare-headed. This is underſtood of the Subjects of the Realme, for all Strangers be ſuffered there and in all places to uſe the manner of their Country, ſuch is the civilitie of our Nation.

CHAP.

Chap. V.

The chiefe points wherein one Common-wealth doth differ from another.

NOw that wee have ſpoken of the Parliament (which is the whole, univerſall, and generall conſent and authoritie aſwell of the Prince, as of the Nobilitie and Commons, that is to ſay, of the whole head and body of the Realme of *England*) and alſo of the Prince, (which is the Head, Life and Governour of this Common-wealth) there remaineth to ſhew, how this Head doth diſtribute his authoritie and power to the reſt of the members for the government of this Realme, and Common-wealth of the politicke bodie of *England*.

And whereas all Common-wealths and Governments be moſt occupied, and be moſt divers in the faſhion of five things: In making of Lawes and

and Ordinances, for their owne government: in making of battell and peace, or truce with forreigne Nations: in providing of mony for the maintenance of themselves, and defence of themselves against their enemies: in chusing and election of the chiefe Officers and Magistrates: and fiftly, in the administration of justice. The first and third wee have shewed is done by the Prince in Parliament. The second and fourth, by the Prince himselfe: the fifth remaineth to be declared.

CHAP. VI.

Of three manners and formes of tryals or judgements in England.

BY order and usage of *England*, there be three wayes and manners, whereby absolute and definite judge-

judgement is given, by Parliament, which is the higheſt and moſt abſolute, by Battell, and by the great Aſſiſe.

Chap. VII.

Tryall, or Judgement by Parliament.

THe manner of giving judgement by Parliament between private and private men, or betweene the Prince and any private men, be it in matters Criminall or Civill, for land or for heritage doth not differ from the order which I have preſcribed, but it proceedeth by Bill thrice read in each Houſe, and aſſented to, as I have ſaid before, and at the laſt day confirmed & allowed by the Prince, howbeit ſuch Bils be ſeldome received, becauſe that great Councell being enough occupied with the publike affaires of the Realme, will not gladly

gladly intermeddle it ſelfe with private quarrels and queſtions.

CHAP. VIII.

The tryall of Judgement by Battell.

THis is at this time not much uſed, partly becauſe of long time the Pope & the Clergy, to whom in time paſt we were much ſubject, alwaies cryed againſt it as a thing damnable and unlawfull: and partly becauſe in all Cõmon-wealths, as to the tongue ſo to the manners, faſhions, habits; yea, and kinds of tryals and judgements, and to all other things that is therein uſed, time and ſpace of yeeres bringeth a change. But I could not yet learne that it was ever abrogated. So that it remaineth in force, whenſoever it be demanded: The manner of it is deſcribed in *Britton*.

CHAP.

Chap. IX.

The tryall by Assise or twelue men, and first of the three parts which bee necessary in judgement.

THe two first judgements be absolute, supreme and without appeale; and so is also the judgement by the great Assise. And the cause or manner of Judgements in *England* is in many things different from the fashion used either in *France*, or in *Italy*, or in any other place. If the Emperours Lawes and Constitutions (called the Civill Lawes) be put in use, it will bee necessary here to make a little digression, to the intent that that which shall be said hereafter, may be better understood. All pursutes and actions (we call them in our English tongue, pleas) and in barbarous (but now usuall Latine) *placita*, taking that name, *abusivè* of the definitive sentence, which may

may well be called *placitum*, or ἀρεσὸν. The French uſed the ſame, called in their Language, the ſentence of their Judges *areſte*, or *areſt*; in which words notwithſtanding after their cuſtome they doe not ſound the *ſ*. But we call *placitum*, the action, not the ſentence; and *placitare* barbarouſly, for to plead in Engliſh, *agere*, or *litigare*. Now in all judgments be two parties, the firſt wee call the Impleader, Suiter, Demander, or Demandant, and Plaintiffe. In Criminall Cauſes, if he profeſſe to be an accuſer, we call him Appellant, or Appelour, and ſo, accuſation wee call appeale. The other we call the Defendant, and in Criminall cauſes, Priſoner; for he cannot anſwer, in cauſes Criminall, before he doe render himſelfe, or be rendered Priſoner.

Judex, is of us called Judge, but our faſhion is ſo divers, that they which give the deadly ſtroke, and either condemne or acquite the man for guilty or not guilty, are not called

led Judges, but the twelve men. And the ſame order is aſwell in civill matters and pecuniary, as in matters criminall.

Chap. X.

Of Pleas or Actions.

Pleas or Actions Criminall, be in Engliſh called Pleas of the Crowne, which bee all thoſe which tend to take away a mans life or any member of him, for his evill deſerving againſt the Prince and Common-wealth.

And this name is given not without a cauſe. For taking this for a principle, that the life and member of an Engliſhman is in the power onely of the Prince and his Lawes, when any of his Subjects is ſpoyled either of life or member, the Prince is endamaged thereby, & hath good cauſe to aske account how his Subjects ſhould come to that miſchiefe.

And

And again, for ſo much as the Prince who governeth the Scepter, and holdeth the Crowne of *England* hath this in his care and charge, to ſee the Realme well governed, the life, members, and poſſeſſions of his Subjects kept in peace and aſſurance: he that by violence ſhall attempt to break that peace and aſſurance, hath forfeited againſt the Scepter and Crowne of *England*: and therefore not without a cauſe in all iniquiſitions and inditements, if any be found by the twelve men to have offended in that behalfe, ſtraight the Prince is ſaid to be party, & he that ſhal ſpeak for the priſoner ſhall be rebuked, as ſpeaking againſt the Prince. Nevertheleſſe, it is never forbidden, but the priſoner, and party Defendant, in any cauſe may alledge for him all the reaſons, means, and defences that he can, and ſhall be peaceably heard and quietly. But in thoſe pleas and purſuites of the Crowne, Procuror or Advocate hee gets none, which in civill and pecuniary mat-

Saving in appeales, & upon a ſpeciall plea, *Actio*, is the parties whole ſuit: *Breve* is the Kings precept.

ters (be it for Land, Rent, Right, or Poſſeſſion, although he plead againſt the Prince himſelfe) he is never denied.

Pleas Civill be either perſonall or reall: perſonall, as contracts, or for injuries: reall, be either poſſeſſory, to aske, or to keepe the poſſeſſion; or in *rem*, which wee call a Writ or Right. For that which in the Civill Law is called *actio* or *formula*, we call Writ in Engliſh, ſo the Greeks called it word for word γραφὴ, and in our barbarous Latine we name it *Breve*.

And as the old Romans had their actions ſome *ex jure civili*, and ſome *ex jure pretorio*, and ordinarily *Prætor dabat actiones, & formulas actionum*: ſo in *England* we retaine ſtill this, and have ſome Writs out of the Chancery, other out of the Common Pleas or the Kings Bench.

CHAP.

CHAP. XI.

Of the chiefe Tribunals, Benches, or Courts of England.

IN times past (as may appeare to him that ſhall with judgement reade the Hiſtories and Antiquities of *England*) the Courts and Benches followed the King and his Court whereſoever hee went, eſpecially ſhortly after the Conqueſt. Which thing being found very comberſome, painfull, and chargeable to the people, it was agreed by Parliament that there ſhould bee a ſtanding place where judgement ſhould bee given. And it hath long time been uſed in Weſtminſter Hall, which King *William Rufus* builded for the Hall of his owne houſe. In that Hall bee ordinarily ſeene three Tribunals, or Judges ſeats. At the entry on the right hand the Common Pleas where civill matters are to be pleaded, ſpecially ſuch as touch Lands or

Contracts. At the upper end of the Hall on the right hand, the Kings Bench where Pleas of the Crowne have their place: and on the left hand ſitteth the Chancellour accompanied with the Maſter of the Rolls, who in Latine may be called *Cuſtos archivorum Regis*, and certain men learned in the Civill Law, called Maſters of the Chancerie, in Latine they may be called *Aſſeſſores*.

CHAP. XII.

Of the times of pleading called Termes: and of the Chancellour and Chancerie.

TWo things may be moved in queſtion here, how all *England* (being ſo long and ſo large, and having ſo many Shires and Provinces therein) can be anſwered of juſtice in one place, and in three Benches, bee they never ſo great? Another (whereas the Kings Bench is exerciſed

ciſed in criminall cauſes, and in all pleas of the Crown, and the Common place in all civill cauſes (reall, and perſonall) what place then hath the Chancerie?

The firſt queſtion will ſeeme more marvellous, and have more occaſion of doubt, when I ſhal alſo tel that the Law is not open at all times, no, not the third part of the yeer. But where all other Cities & Common-wealths had all the yeere Pleas, Suites and Judgements, except for certaine holy-dayes and Harveſt, Vintage, or when for ſome urgent cauſe the Law was commanded to bee ſtopped, which is called *Juſtitium*: contrarie in ours it is but few times open. That is onely foure times in the yeere, which they call Termes: After Michaelmas about ten dayes, during five or ſix weekes at the leaſt. After Chriſtmas about a moneth enduring by the ſpace of three weeks. Then from ſeventeene dayes after Eaſter by the ſpace of three weekes and odde dayes. Likewiſe from the ſix or

ſeventh day after Trinitie Sunday, during two weeks & odde dayes. All the reſt of the yeere there is no pleading, entring nor purſuing of actions. This ſmall time, and all that but in one place, may ſeeme very injurious to the people, who muſt bee faine to ſuffer much wrong for lacke of Juſtice, and of place and time to plead: but unto that hereafter I intend to anſwer more fully, and at large, and in the meane while that ſhall ſuffice which the wiſe *Cato* anſwered to one who moved, that the pleading place in Rome might be covered over with canvaſſe, as their Theaters were, to the intent that the Plaintiffes and Defendants that were there might plead their matters more at eaſe, and not bee in ſo much danger of their health by the heate of the Sun ſtriking full and open upon their heads, which was no ſmall griefe and diſeaſe, ſpecially at Rome: Nay (ſaith *Cato*) for my part I had rather wiſh that all the wayes to the place of pleading were

caſt

caſt over with Galthrops, that the feet of ſuch as love ſo well pleading ſhould feele ſo much paine of thoſe pricks in going, as their heads doe of the Sunne in tarrying there: he meant that they were but idle, hot heads, buſie-bodies, and troubleſome men in the Common-wealth that did ſo nouriſh pleading: good labourers and quiet men could bee content to end their matters at home by judgment of their neighbours and kinsfolke, without ſpending ſo their money upon Procurers and Advocates whom we call Atturneys, Counſellors, Sergeants, and generally men of Law. Thoſe be accounted profitable Citizens who attend their honeſt labour and buſines at home, and ſtand not waiting and gaping upon their Rolles and Proceſſe in the Law: as for the other, by his judgement, it was no matter what miſchiefe they ſuffered. To the other queſtion of the Chancerie; this I anſwer: That our law which is called of us, the Common law, as

yee would say *Jus civile*, is, and ſtandeth upon ἀκριβοδικαίς, that is *Jus ſummum*: and their maximes be taken ſo ſtreightly, that they may not depart from the tenour of the words, even as the old civill Law was. And therefore as that lacked the help of the *Prætor* (which might *moderari illud ius ſummum*, give actions where none was, mitigate the exactneſſe and rigour of the law written, give exceptions as *metus*, *doli mali*, *minoris ætatis &c.* for remedies, and maintaine alwayes *æquum bonum*:) the ſame order and rancke holdeth our Chancerie, and the Chancellor hath the very authoritie herein as had the *Prætor* in the old civill Law before the time of the Emperours. So hee that putteth up his Bill in the Chancery after that he hath declared the miſchiefe wherein he is, hath reliefe as in the ſolemne *Forum*. And for as much as in this caſe hee is without remedie in the common Law, therefore he requireth the Chancellour according

to

to equitie and reaſon to provide for him and to take ſuch order as to good conſcience ſhall appertaine. And the court of the Chancerie is called of the common people the court of Conſcience, becauſe that the Chancellor is not ſtrained by rigor or forme of words of Law to judge but *ex æquo* and *bono*, and according to conſcience as I have ſaid. And in this Court the uſuall and proper forme of p'eading of England is not uſed, but the forme of pleading by writing, which is uſed in other countries according to the civill Law, and the triall is not by twelve men, but by the examination of witneſſe, as in other Courts of the civill Law.

Out of this Court, as from the perſon of the Prince come all manner of originall Writs. The declaration of writs is at large ſet downe in the regiſter of writs, and in the *Natura brevium*: Out of this Court come moſt commonly Commiſſions, Patents, Licences, Inquiſitions &c.

The Judges of this court are the L.

Chancellour of England, Assistants, the Masters of the Rols, and six Masters of the Chancery, which are cõmonly Doctors of the Civil Law.

Officers are the sixe Clarks of the Chancery, the Clark of the Crowne generall, the Register, Controler of the Seale, two examiners, the clark of the Hamper, the three clarks of the Petty bag, the Cursiters, the Sergeant of the Mace.

The Lord Chancelor is the keeper of the great Seale, and hath it carried with him whersoever he goeth.

The Master of the Rols is the keeper of the Records, Judgments, and Sentences given in the Court of Chancerie.

The six Masters are assistants to the Court, to shew what is the equity of the civill Law, & what is conscience.

The Clarke of the Crowne is the chiefe Guardian of the matters of the Crowne: what are Crowne matters, and pleas of the Crowne, see in the learned Booke of *Stanford* called the *Pleas of the Crowne*.

The

The six Clarks are the Atturnies, as well for the Plaintiffe, as Defendant, in every suite in the court.

The Register is the engrosser and keeper of the decrees, publications, orders, and injunctions issuing out of this Court.

The two examiners are such as take the examination of the witnesses brought to prove or reprove any thing in suite in this Court, and to put their depositions and answers made to their interrogatories in writing.

The Controler of the Seale is to see and allow of all the Writs made in this court.

The Clarke of the Hamper is hee that doth receive the fines due for every Writ sealed in this court.

The three Clarks of the Pettie bag, are they that receive the Offices that are found in the Court of Wards.

The Cursiters are Clarks appointed to their severall shires which do write originall Writs that belong

to

to this court or the common place.

The Sergeant carrieth the Mace before the Lord Chancellor, and is to call any man before him at his commandement.

The Proceſſe in the Chancerie is a *Subpœna*, which is but to call the partie before him upon a paine, as upon paine of xl.li.&c. And this is the way uſed to bring in the party, or elſe by the Sergeant as before.

The punishment is, if the party will not come in, or comming in, will not obey the order of the court, impriſonment during the pleaſure of the Lord Chancellour.

The order of proceeding is by Injunctions, Decrees, and orders which are to bind the partie, and if hee reſiſt, his puniſhment is impriſonment.

The matter in this Court are all cauſes wherein equity and extremitie of Law doe ſtrive, and where the rigour of Lawes have no remedy, conſcience and the moderation of *Summum jus* hath ſufficient.

And

And here is to be noted, that conſcience is ſo regarded in this Court, that the Lawes are not neglected, but they muſt both joyne and meet in a third, that is, a moderation of extremity.

This court is called of ſome *Officina Juris Civilis Anglorum*, becauſe out of this court iſſue all maner of Proceſſe which give the partie his cauſe of action in other courts.

CHAP. XIII.

Of Judges in the Common Law of England, and the manner of triall and pleading there.

THe Prince out of the numbers of thoſe who have been Counſellours or Sergeants at the Law, which bee thoſe who in Latine are called *canſidici* or *advocati*, chooſeth two of the moſt approved for learning, age, diſcretion, and exerciſe,

cise, of whom the one is called Chiefe Justice of the Kings Bench, or simply Chiefe Justice; the other of the Common Place, and others to the number of sixe or more, which have each an ordinary fee or stipend of the Prince.

These doe sit at such dayes as be terme, which may be called *Dies legitimi juridici*, or *fasti*, in their distinct places, as I have said before. There they heare the pleading of all matters which doe come before them: and In civill matters where the pleading is for Money, or Land, or Possession, part by Writing, and part by Declaration and Altercation of the Advocates the one with the other, it doth so proceed before them till it doe come to the issue, which the Latines doe call *statum causæ*, I doe not meane *contestationem litis*, but as the Rhetoricians do call *statum*, wee doe most properly call it the issue; for there is the place where the debate and strife remaineth (as a water held in a close and darke vessell

veſſell iſſueth out, and is voided and emptied) and no where elſe: that ſtroke well ſtricken is the departing of all their Quarrels. Iſſues or *ſtatus* in our Law be ordinarily two, *facti* and *juris*.

CHAP. XIV.

Of the Kings Bench.

THe Kings Bench is the Kings Court, ſo called becauſe uſually the Kings have ſitten there, and alſo becauſe that therein all cauſes are handled which appertaine to the Crowne: and ſuch cauſes as wherein the King or Queene is a party, if they properly appertaine not to ſome other Court.

The Judges of the Kings Bench are the Lord chiefe Juſtice of England, with other his companions aſſiſtant in giving judgement.

The Sergeants and Counſellours doe debate the cauſe.

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The ſentence is given by the chiefe Juſtice, the others all or the moſt part aſſenting, as it ſhall appeare to be in other courts likewiſe. If they cannot agree, then is the matter referred to a demurre in the Exchequer chamber before all the Juſtices of both the Benches, *viz.* the Kings Bench, and the Common Pleas, and the Lord Chiefe Baron of the Exchequer.

The Officers in the Kings Bench, are the chiefe Protonothary, the Secondary, the Clarke of the Crowne, the Clarke of the Exigents, the Clarke of the Papers, the Cuſtos Brevium, and Cuſtos Sigilli.

The Protonothary is he, that recordeth all Judgements, Orders, and Rules in this Court, and all Verdicts given, being not of Crowne matters.

The Secondary is the Protonotharies Deputie, for the ſaid cauſes, and he is the keeper and maker up of theſe Records in Bookes.

The Clarke of the Crowne, is to frame

frame all Indictments of Felony, Treason, Murther, &c. all manner of Appeales, and after to record them and enter the Verdict, and to make and keepe the Records touching theſe matters.

The Clark of the Exigents is to frame all manner of Proceſſes of *Exigi facias*, which doe iſſue out of that Court to out-law any man, and to record the out-lawry.

The Clarke of the Papers is hee that keepeth all Rols, Scripts, and pleadings, and other things in writing which are not of Record.

The Cuſtos Brevium is he which fileth all the Writs Judiciall and Originall, after the Sheriffe hath returned them: he is chargeable if any be embeſelled or privily conveyed away from the file.

The Cuſtos Sigilli is he that doth keep the Seale, and ſeeketh all judiciall Writs, and all Patents, Licences iſſuing out of this Court, and taketh the fee due for them, and thereof to make his account.

There

There are certaine Atturnies belonging to this Court, in number, as the Protonotary ſhall appoint: thoſe are for Plaintiffes and Defendants in every cauſe, and they frame and make the pleadings.

The manner of proceeding in this Court is by Latitat, Arreſt, and Bill.

The Latitat, is to bring the party in, when he is not to be found, or will not appeare and anſwer.

Arreſt, is when the party is arreſted, and then is driven to finde baile, *viz.* two ſufficient ſureties or more, as the caſe ſhall need.

By Bill the Suite is when the party is in *Cuſtodia Mareſchallia*, and from thence brought to anſwer.

The matters of this court are properly all matters of the Crowne, whereof ſee *Standfords* Booke aforeſaid.

In theſe they proceed by Indictments, Verdict, Appeale, improperly, all ſuites wherein the King is a party, or have any loſſe. Such are conſpi-

conſpiracies, cham-parties, Imbraſier, Maintenance, *Deceis tantum maymes*, Slanders, Actions *ſur leas*: of theſe ſee *Natura Brevium*.

CHAP. XV.

Of the Court of Common-Pleas.

THE court of Common Pleas is the Kings court, wherein are holden all common pleas betweene Subject and Subject, of all matters of common Law: ſo called, for that it ſerveth for the exact and preciſe adminiſtration of the common Law.

The Judges in this court are, the Lord chiefe Juſtice of the common Pleas, three other his Aſſociats: The Sergeants at the Law whoſe number is ſometimes more, ſometimes leſſe, at the pleaſure of the Prince. Theſe all are ſworne to ſerve the turne of the common Law at this Barre.

Two of them are alwayes appointed

ted to ſerve the Princes turne in what Court ſoever, and are called the Kings Sergeants.

The Officers of this Court are the Cuſtos Brevium, three Protonotharies, the Clarke of the Warrants, the Clark of the Eſſoynes, divers Atturnies, Filliſers for every Shire, the Clarke of the Juries, the Chirographer for fines, the Clark of the Kings ſilver for errours in this Court committed, the Clark of the Seale, as before for the Kings Bench.

The Cuſtos Brevium is the chiefe Clark in the Court, and hee hath the cuſtody of all the Writs whatſoever returnable into this Court, come they either at the day of the returne, or after the day, which is called *poſt diem*.

The Protonotharies are they which after the parties have appeared in court, do enter the matters in ſuite, and make the pleadings, and enter them.

The Filliſers are they which make up all meane proceſſe upon the originall

originall Writs, and the ſame Writs returned by the Sheriffe, are by the Atturnies delivered to the Cuſtos Brevium to file or ſtring, there to remaine on Record.

The Exigenters are ſuch as make out the Exigents and Writs of Proclamation to every county, where the parties are, that upon the ſame Proceſſe or Summons will not appeare.

The Clarke of the Warrants is he which doth take the Warrants of an Atturney, which ſhall proſecute for the Plaintiffe or Defendant: and is he that enrolleth all deeds acknowledged before the Juſtices of the ſame court.

The Clarke of the Eſſoynes, is he which doth Eſſoyne the Defendants in every Action, before the day of his appearance.

An Eſſoyne is an ordinary delay by Office of court in action: and the Officer before whom the Clarke is to take the Eſſoyne, is the puiſne Juſtice in the Common Pleas, who

for

for that purpose, sitteth three dayes before the Terme.

The common Atturnies are such as are allowed in this court, by the Lord chiefe Justice of the common Pleas, and his Assistants to prosecute or defend according to the instructions of their clients for the Plaintiffe or Defendant.

The Clark of the Juries is he that doth make the *Venire Facias*, to the Sheriffe to warne the Juries by.

The Chirographer is he that hath the Writ of covenant with the concord brought unto him, and he maketh the Indenture tripartite, whereof two are delivered to the party for whose use the fine is acknowledged, and the third part is reserved with him. And all the Proclamations of the same fine according to the Statutes made, are endorsed on the third part remayning, and it is commonly called the foot of the fine.

The Clarke of the Kings silver is a distinct Office of the fines, and is he

he who setteth downe the money that his Majesty is to have for the fine, according to the yeerely value of the Land confessed, knowne, deposed, or agreed upon.

All Errours in this court committed, are reformed in the Kings Bench, before the Lord chiefe Justice, and other Justices there assistant by Writ of Errour.

There is also the Clarke of the Out-lawries, who is the Kings Atturney Generall, and he entreth the Out-lawry for the King, after the Exigent delivered: and he maketh all the Writs of Out-lawry: and none are to be made but by him.

The matters of the common Pleas are all sutes of common Law commenced by any Writ originall, reall, or personall.

Reall are such as touch the inheritance, or fee of any man.

Personall are such as touch transitory things, as goods, chattels, personall wrongs,

The difference betweene a Writ Originall,

Originall, and a Writ Judiciall, is this: the originall saith in the end of it (in the person of the King or Queen) *teste meipso*, or *meipsa apud Westmonasterium*. The Judiciall Writ saith in the end, *Teste Christophoro Wray*, or *Teste Jacobo Dyer*, or such other as shal be the Lord chiefe Justice of either of those Benches.

The order of processe how they follow the one after the other. In this court is first a *Summoneas* in some Action, then *Attachias*, but in most a *Capias*, then a *Capias pluries*, then *Exigi facias*, and a Proclamation into the county where the Defendant dwelleth.

The *Summoneas* is the originall, and goeth out of the Chancery, and is directed to the Sheriffe, to bring the party by a day.

The Sheriffes order in serving this Writ, is to goe himselfe, or his Bayliffe, to the Land, and there to garnish the party, by sticking up a stick on his Land, which done, the Sheriffe returneth two common pledges,

ges, *Johannes Do*, and *Richardus Ro*, and two *Summonees*, *Richardus Den*, *Henricus Fen*. After the Summonees, if the party come not in, issueth out an *Attachias* in nature of a precept, to authorize the Sheriffe to go to his Land or House, and there to take a pledge for his appearance.

But if the party Plaintiffe meane to out-law the Defendant, he getteth a *Summoneas* out of the Chancery to the Sheriffe to warne the party, who returneth *nihil habet*, &c. Then the Plaintiffe getteth a *Capias* to take his body, and then an *Alias Capias*, then a *Pluries Capias*, to all which the Sheriffe returneth in order as they bee given out, *non est inventus*; after which if the Party appeare not, goeth out to the Sheriffe the *Exigi facias*, and a Proclamation to proclaime the party in five severall County dayes: after which Proclamations, if he doe not appeare, he is returned *Quinto exactus*, & *non comparuit & ideo utlagatus*, unlesse

leſſe hee doe firſt purchaſe a *Superſedeas*, to the court to ſurceaſe. The *Superſedeas* is granted at the ſuite of the Defendant, to ſtay the Out-lawrie, and is an appearance to the ſuite for the Defendant, ſuggeſting to the court, that his Exigent *improvidè emanavit* ſhewing that the Defendant was alwayes ready to appeare by his Atturney. This done, the Plaintiffe declareth, the Defendant anſwereth, if the anſwer bee iſſuable they proced to tryall.

The manner of proceeding is either to joyne iſſue, and ſo to paſſe to Verdict, or elſe to Demurre. The tryall is by Verdict, when the queſtion is made *de facto*, as where the matter was done, when, by whom, &c.

CHAP.

CHAP. XVI.

Of the two manners of Issues.

IF the question bee of the Law, that is, if both the parties doe agree upon fact, and each doe clayme that by Law he ought to have it, and will still in that sort maintaine their right, then it was called a Demurrer in Law; where, if in the Law the case seeme to the Judges that sit, doubtfull, it is called a Checker chamber case, and all the Judges will meet together, and what they shall pronounce to bee the Law, that is held for right, and the other party looseth his Action or Land for ever. If the Sergeants or Counsellors doe stand upon any point in the Law which is not so doubtfull, the Judges who be taken for most expert, bids him goe forward, and if he hath no other to say, but standeth upon that point of the Law, that bidding goe

But sometimes it is determined by the same Court only.

This should be meant of a respondes ouster, when the opinion is against him that taketh an exception, which is not peremptory he may deny it by protestation.

forward, is taken that hee looseth his action, and the Defendant is licensed to depart without a day: and this is where the issue or question is of the Law or *Juris*. So is that case where the Law is not doubtfull, according to the matter contained in the Declaration, Answer, Replication, Rejoynder, or Triplication, the Judge out of hand decideth it. And it is the manner that each party must agree to the other still in the fact which he cannot deny. For if hee once come to deny any deed as not done, not his writing, that the man by whom the Adversary claimeth, was not the Adversaries Ancestor, or the evidence which the Adversary bringeth is not true, or that his gift was former, or any such like exception, which is availeable to abate the Action, or barre the party, and the other joyneth in the affirmative, and will averre and prove the same, this is called the issue; and immediatly all question of the Law ceaseth

as

as agreed by both the parties, that there is no queſtion in the Law. Then as the iſſue *facti* is found by the twelve men, of whom wee ſhall ſpeake hereafter, ſo the one party or other looſeth his cauſe and Action: ſo that contrary to the manner of the Civill Law, where firſt the fact is examined by Witneſſes, Indices, Torments, and ſuch like Probations to finde out the truth thereof, and that done, the Advocates do diſpute of the Law, to make of it what they can: ſaying, *ex facto jus oritur*. Here the Sergeants or Counſellours before the Judges do, in paſſing forward with their pleading, determine and agree upon the Law, and for the moſt part, and in a manner all Actions, as well criminall as civill, come to the iſſue and ſtate of ſome fact which is denied of the one party, and averred of the other, which Fact being tryed by the twelve men, as they find, ſo the Action is wonne or

loſt. And if a man have many peremptory Exceptions (peremptory Exceptions I call onely thoſe which can make the ſtate and iſſue) becauſe the twelve men bee commonly rude and ignorant, the party ſhall bee compelled to chooſe an Exception whereupon to found his iſſue; which choſen, if hee faile in that by the Verdict of twelve men, he looſeth his Action and cauſe, and the reſt can ſerve him for nothing.

Having ſeene both in France and in other places many Deviſes, Edicts and Ordinances, how to abridge Proceſſe, and to finde how that long Suites in Law might bee made ſhorter, I have not perceived nor read, as yet, ſo wiſe, ſo juſt, and ſo well deviſed a meane found out as this, by any man among us in Europe.

Truth it is, that where this faſhion hath not beene uſed, and to them to whom it is new, it will not be ſo eaſily underſtood, and there-

fore

fore they may peradventure bee of contrary judgement: but the more they doe weigh and consider it, the more reasonable they shall find it.

How the Issue, Question, or *status juris* is decided, I have told: now I will shew how it is tried, when it doth come to the Question, State, or Issue of the Deed.

And first, I must speake more largely of the manner of proceeding in the Processe, and of such persons as be necessary for the execution thereof.

CHAP. XVII.

Of the Sheriffe of the shire, and of the Court of Exchequer.

THe Romanes had to execute the commandements of the Magistrates, *Lictores*, *Viatores*, *Accensos*. The civill Law since

Scats in ancient Saxon is that which we by a borrowed terme call treasure, whereof is derived Scacearium, signifying a Court dealing with the Kings treasure or revenues, and also Escactor, that is an Officer which imployeth the Kings profit.

that time hath other names, termes, and Officers. The execution of the commandements of the Magistrates in England, is ordinarily done by the Sheriffes. The Sheriffe (which is as much to say as the Reeve or Bayly of the Shire) is properly word for word *Quæstor Provinciæ*; it is he which gathereth up and accounteth for the profits of the Shire, that come to the Exchequer.

The Exchequer (which is *Fiscus Principis*, or *æravium publicum*, and I cannot tell in what language it is called *Scaccarium*, some thinke it was first called *stataríum*, because that there was the stable place to account for the revenues of the Crowne, aswell that which came of patrimony, which wee call the demeasnes, as that which commeth of other incident requisitions, be they rents, customes, tenthes, quinzieſmes, taxes, subsidies whereſoever the Prince or his Court bee according to the time and occasion) was a place stable, continuall,

and

and appointed for to reckon and account. The hearers of the account (who in Latine may bee called *tribuni erarii*) have auditors under them; which the Latines doe call *Rationales*, but they are the chiefe for the accounts of the Prince, and may bee called *juridici rationales*, in Englifh wee call them Barons, of the Exchequer; whereof is one who is called the chiefe Baron, as *Tribunus*, or *Juridicus rationalis primus*, or *princeps*, with others to them affiftant: Chancellour of the Exchequer, two Chamberlaines, and Atturney generall. The chiefe of all is called High Treafurer of England, as you would fay in Latine, *Supremus erarii Anglici quæftor*, or *Tribunus erarius maximus*.

Hee hath the charge and keeping of the King or Queenes treafure, and many Officers are at his fole appointment, and to him accountant, as well in the Tower, Exchequer, as elfewhere; as Auditors

in the Mint, Auditors and Tellers in the Exchequer, Receivers, &c.

The Chancellour is the under treasurer, and is governour of the court, under the high treasurer. Many Officers also are at his appointment.

The chiefe Baron is the Judge in Law-causes, incident to this court, the three other Barons assistants.

The Atturney is the Atturney generall, to defend the Kings right, and to peruse all grants, particulars, suits and causes handled in this court. There are common Atturneyes besides, which serve for the suiters of this court.

The other Officers are two Remembrancers, two Clarkes of the Pipe, two of the first fruits and tenthes.

The Remembrancers are those which keepe all the Records of the Exchequer betweene the King and his subjects, and enter the rules and orders there made, the one is for the

the Prince, the other is for the Lord treaſurer.

The Clarkes of the Pipe are thoſe that make leaſes upon particulars; and receive the Sheriffes accounts; thoſe receive alſo the bonds and titles of other aſſurances.

In the Office of the firſt fruits, are received all firſt fruits due to his Majeſty by Biſhops, Deanes, and all Eccleſiaſticall Perſons, anſwerable by order of the Law. Other officers are tellers, Auditors, Collectors, Rent-gatherers, taile-makers.

The matters of this court are all puniſhments, as intruſions, alienations without licence, penall, forfaitures upon popular actions (a popular action is while one part is given to the informer, the reſt to the Prince.) Of theſe ſee the whole body of ſtatutes at large in *Raſtalls* collection.

In this court are handled all paiments, accounts, expences of the Kings revenues.

The uſuall Proceſſe of this Court

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is a *Sub pœna* out of this court, as a messenger to call the party.

In this court be heard *Quadruplatores*, which we call Promoters, which bee those that in popular and penall actions be *delatores*, having thereby part of the profit by the Law assigned. In this court if any question bee, it is determined after the order of the Common law of England by the twelve men, as I have said, and all customers which were in Latine called *Publicani*, in Greeke *Telonai*, do account in this Office.

The Sheriffe of the shire is called in our common Latine *Vicecomes*, one would say, *Vicarius comitis*, *Procomes*, doing that service, to attend upon the execution of the commandements of the Tribunals or Judges which the Earle or County should doe: which Earle or County for the most part was attending upon the Prince in the warres, or otherwise about the Prince, as the word beareth *comes Principis*.

Principis: whereby it may appeare, that the chiefe Office of the County or Earle, was to see the Kings justice to have course, and to be well executed in the shire or county, and the Princes revenues well answered and brought in *ærarium Principis*, which is called of the treasurie.

If any fines or amercements, which in Latine be called *Mulctæ*, be levied in any of the said Courts, upon any man, or any arrerages of accounts by the Latines called *reliqua*, of such things as are of customes, taxes, subsidies, or any other such occasions, the same the Sheriffe of the Shire doth gather, and is respondent therefore in the Exchequer, As for other ordinary Rents of Patrimoniall lands, and most commonly for the taxes, customes, and subsidies, there bee particular receivers and collectors which doe answer it into the Exchequer. The Sheriffe hath under him an under-Sheriffe at his charge and appointment, lear-

learned ſomewhat in the law, eſpecially if he bee not learned himſelfe, and divers Bayliffes which be called Errants, whom he makes at his pleaſure, who can know each land and perſon in the Shire, and their ability to goe upon Enqueſts, either to diſtraine, or to ſummon him to appeare whom the Sheriffe ſhall appoint, and for this cauſe to the Sheriffes, as to the Miniſter moſt proper of the Law, the Writs be directed.

When any thing commeth to an iſſue of the deed or fact, there is a Writ and writing directed to the Sheriffe of the Shire where the land is, whereupon the controverſies, or where the man dwelleth of whom the money is demanded, which Writ is called *venire facias*. Then after the ſame effect an *alias*, *pluries*, or *diſtringas*, according to the nature of the action to the returne of the Sheriffe. And if for any diſobedience of not comming and appearing there bee a fine (which the Latines

doe

doe call *Mulcta*) ſet upon any Jurors head, the Sheriffe is charged with it, and taketh the diſtreſſes which in Latin are called *Pignora*, and anſwereth therefore to the Exchequer. The Sheriffe is alſo ready by himſelfe or by his under-Sheriffe, to ſerve as well the Juſtices of Peace in their quarter Seſſions, as the Juſtices called *Itinerantes* in their great Aſſizes, when they come into the Shire, which is twice in the yeere to diſpatch and void actions criminall and civill depending at the common law, and which bee come now to the iſſue. Hee hath alſo the charge of all priſoners committed to the priſon which we call the Goale, and when any is condemned to die, it is his charge to ſee the ſentence executed. To be ſhort, he is as it were the generall miniſter and higheſt for execution of ſuch commandements, according to the Law, as the Judges ordaine, and this is enough for the Sheriffe.

CHAP.

Chap. XVIII.

Of the twelve men.

OF what manner and order of men in the Common-wealth the twelve men be, I have already declared. The Sheriffe alwayes warneth foure and twenty to appeare, leſt peradventure any might bee ſicke or have a juſt cauſe of abſence; and if there be not enow to make an Enqueſt, the abſents be amerced. For although they bee called twelve men, as a man would ſay *duodecim viri*, yet if they be twelve, twenty, or the whole number of foure and twenty, that is no matter, twelve they muſt be at leaſt to make an Enqueſt, or as ſome call it a Queſt. An Enqueſt or Queſt is called this lawfull kind of tryall by twelve men. In actions civill, which are ether of contracts or for land or poſſeſſion, when ſo many of thoſe that be warned appeare

peare at the call, as be able to make an Enqueſt, which, as I ſaid before, be no leſſe then twelve, either part when they be come taketh their challenges againſt ſo many of them as they will, which be, that he may not ſpend ſo much land a yeer, he is allied, fee'd, ſervant to his adverſe party, hee is his enemie, &c. And two of the whole number doe try, and allow or diſallow the reſt.

If after exceptions, there be ſo many rejected that there is a not full Enqueſt in ſome caſes that day is loſt: In ſome the Enqueſt is filled *ex circumſtantibus*. When the Queſt is full, they be ſworne to declare the truth of that iſſue, according to the evidence, and their conſcience. Then the Sergeants of either ſide declare the iſſue, and each for his clyent ſaith as much as he can. Evidences of Writings be ſhewed, witneſſes be ſworne, and heard before them, not after the faſhion of the civill Law, but onely that

not

not onely the twelve but the Judges, the parties, and as many as be present may heare what each witnesse doth say: The adverse party or his advocates which we call Counsellours and Sergeants, interrogateth sometime the witnesses, and driveth them out of countenance.

Although this may seeme strange to our Civillians now, yet who readeth *Cicero* and *Quintilian* well shall see, that there was no other order and manner of examining witnesses, or deposing among the Romanes in their time. When it is thought that it is enough pleaded before them, and the witnesses have said what they can, one of the Judges with a briefe and pithy recapitulation reciteth to the twelve, in summe, the arguments of the Sergeants of either side, that which the witnesses have declared, and the chiefe points of the evidence shewed in writing, and once againe putteth them in minde of the issue, and sometime giveth it them in

writing,

writing, delivering to them the evidence which is ſhewed on either part, if any be (evidence here is called writings of contracts, authenticall after the manner of England, that is to ſay, written, ſealed, and delivered) and biddeth them goe together.

Then there is a Bayliffe charged with them to keepe them in a chamber not farre off, without bread, drinke, light, or fire: untill they be agreed: that is, till they all agree upon one verdict concerning the ſame iſſue, and upon one among them who ſhall ſpeake for them all when they be agreed: for it goeth not by the moſt part, but each man muſt agree. They returne, and in ſo few words as may be, they give their determination: few I call ſix, or ſeven, or eight words at the moſt (for commonly the iſſue is brought ſo narrow, that ſuch number of words may bee enough to affirme or to deny it), which done they are diſmiſſed to goe whither they

they will. The party with whom they have given their ſentence, giveth the Enqueſt their dinner that day moſt commonly, and this is all they have for their labour, notwithſtanding that they come, ſome twenty, ſome thirtie, or fortie miles or more, to the place where they give their verdict, all the reſt is of their owne charge. And neceſſarily all the whole twelve muſt bee of that Shire, and foure of them of the Hundred where the land lieth which is in controverſie, or where the partie dwelleth who is the Defendant.

CHAP. XIX.

Of parts of Shires called Hundreds, Laths, Rapes, Wapentakes.

AN Hundred, or Lath, Rape, or Wapentake is ſo called of the diviſions or parts of Shires, in divers Countries diverſly named after

after the manner and language of each Countrie. For the Shires be divided, ſome into ten, twelve, thirteene, ſixteene, twenty or thirtie Hundreds, more or leſſe, either that they were at the firſt a hundred Townes and Villages in each Hundred:) and although now they bee but ſixteene, twenty, thirty, forty, fifty, threeſcore, more or leſſe, yet it is ſtill called an Hundred) or elſe there were but ſo many at the firſt as be now, or a few more or leſſe, and they did find the King to his warres an hundred able men. Lath, and Rape I take to be names of ſervice, for that ſo many Townes in old time, and in the firſt povertie of the Realm, did meet together in one day to carry the Lords corne into his Barne, which is called in old Engliſh a Lath. Or that they met at commandement of the Lord to reape his corne.

Wapentake, I ſuppoſe, came of the Danes, or peradventure of the Saxons. For that ſo many townes came

came by their order then to one place, where was taken a muſter of their Armour and weapons; in which place from them that could not find ſufficient pledges for their good abearing, their weapons were taken away: weapon or weapons in old Engliſh doe ſignifie all Armes offenſive, as ſword, dagger, ſpeare, lance, bill, bowes, arrowes.

Of that place where muſters were taken, or where the ſaid ſervices were done, that Hundreds, Lathes, Rapes, and Wapentakes, had and have yet their names, which be moſt commonly good townes; and it is to be thought at the firſt they were all ſuch. But ſometime now in places whereof the Hundred hath the name, no mention nor memory of a towne remaineth: ſuch mutation time bringeth with it of all things. A Hundred hath one or two high Conſtables, who have ſome authority over all the lower and particular Conſtables. Thoſe high Conſtables bee made by the Juſtices

Justices of the peace of the Shire, and each Hundred hath his Bayliffe who is made by the Lord, if any hath that liberty, or else by the Sheriffe of the Shire for the time being.

CHAP. XX.

Of the Court Baron.

IT may appeare strange that of thirty six Shires, whereof each Shire is divided into divers Hundreds, each Hundred containing divers Parishes, all pleading should be but in one one place, that is, in Westminster Hall, and that but in certaine times of the yeere, making little more then one quarter of the yeere in the whole. And one would thinke that there should be much lacke of Justice and right, and much wrong taken without redresse. But it is not so: the people being accustomed to live in such an equalitie of Justice, and in such sort, that the rich

rich hath no more advantage therein then the poore, the proceſſe and proceeding to the judgement being ſo ſhort, and judgements alſo being peremptory and without appellation: yet to helpe for ſmall matters where no great ſumme is in queſtion, there are other Courts. In every Shire from three weekes, to three weekes, the Sheriffe for ſmall things not paſſing forty ſhillings; and in certaine Hundreds and liberties the Bayliffe likewiſe from three weeks to three weeks, holdeth Plea. And whoſever is poſſeſſioner and owner of a Mannor, may hold from three weekes to three weekes, or at his pleaſure, of his Tenants, and among his Tenants, a Court called a Court Baron: and there his Tenants, being ſworne, make a Jury, which is not called the Enqueſt, but the Homage. Theſe principally doe enquire of the copy-holders and other free-holders that be dead ſince the laſt Court, and bring in their

heires

heires and next succeſſours, and likewiſe of incroachment or intruſion of any of the Tenants againſt the Lord, or among themſelves. They make orders and Lawes amongſt themſelves, the paine of them if they be after broken, commeth to the Lord. And if any ſmall matter be in controverſie, it is put to them, and commonly they doe end it. But theſe Courts doe ſerve rather for men that can bee content to be ordred by their neighbours, and which love their quiet and profit in their husbandry more then to be buſied in Law. For whether party ſoever will, may procure a Writ out of the Higher Court, to remove the Plea to Weſtminſter.

In Cities and other great townes there be divers liberties to hold Plea for a bigger ſum, which doe determine as well as the Common Law, and after the ſame manner, and yet for them that will it may be removed to Weſtminſter Hall.

King *Henry* the eight ordained first a President, Counsellours, and Judges, one for the Marches of Wales, at Ludlow, or else where: another for the North parts of England, at Yorke, where bee many causes determined. These two are as be Parliaments in France. But yet if there bee any matters of great consequence, the party may move at the first, or remove it afterwards to Westminster Hall, and to the ordinary Judges of the Realme; or to the Chancellor, as the matter is.

These two Courts do heare matters before them, part after the common Law of England, and part after the fashion of the Chancery.

CHAP. XXI.

Of the Leet, or Law-day.

LEet, or Law-day is not incident to every Mannor, but to those only

onely which by ſpeciall grant, or long preſcription, have ſuch liberty. This was, as it may appeare, firſt, a ſpeciall truſt and confidence and Commiſſion given to a few put in truſt by the Prince, as is now to the Juſtices of peace, to ſee men ſworne to the Prince, to take Pledges and Sureties in that manner of one for another to anſwer for obedience and truth, to enquire of Privie Conſpiracies, Frayes, Murders, and Bloudſhed, and to this was added the over-ſight of Bread and Ale, and other Meaſures. Many times they that be out of the homage and Court Baron of that Mannor and Lordſhip, bee nevertheleſſe reſtrained and anſwerable to come to the Leet. This Leet is ordinarily kept but twice in the yeere, and that at termes and times preſcribed.

The Leet and Law-day is all one, & betokeneth, word for word, *Legitimum*, or *juridicum diem*. Law the old Saxons called *Lant* or *Lag*, or ſo by corruption and chang-

ing of Language from *Lant* to *Leet*, understanding day. They which keepe our full English terme, call it yet Law-yad.

Chap. XXII.

Of the proceedings of Causes Criminall, and first of the Justices of the Peace.

BEfore the manner of proceeding in causes Criminall can be well understood, it will be necessary to speake of three persons, the Justices of Peace, the Coroners, and Constables. The Justices of Peace be men elected out of the Nobilitie, higher and lower, that is, the Dukes, Marquesses, Barons, Knights, Esquires and Gentlemen, and of such as be learned in the Lawes, such, and in such number as the Prince shall thinke meet, and in whom for wisedome and discretion he putteth his trust, inhabitants within the Countie:

tie: saving that some of the high Nobilitie and chiefe Magistrates, for honours sake, are put in all, or in most of the Commissions of all the Shires of England. These have no time of their rule limited, but by Commission from the Prince, alterable at pleasure.

At the first they were but foure, after eight, now they come commonly to thirty or forty in every Shire; either by increase of riches, learning, or activity in policy and government. So many more being found, which have either will, or power, or both, are not too many to handle the affaires of the Commonwealth in this behalfe. Of these in the same Commission bee certaine named, which be called of the *Quorum*, in whom is especiall trust reposed, that where the Commission is given to forty or thirty, and so at the last it commeth to foure or three, it is necessary for the performance of many affaires to have likewise divers of the *Quorum*. The words of

Commiſſion bee ſuch. *Quorum vos* A B C D, E F. *unum eſſe volumus.*

The Juſtices of the Peace be thoſe in whom at this time for repreſſing of Robbers, Theeves & Vagabonds, of privie complots and conſpiracies, of riots, and violences, and all other miſdemeanours in the Common-wealth, the Prince putteth his ſpeciall truſt. Each of them hath authoritie upon complaint to him of any Theft, Robbery, Man-ſlaughter, Murder, Violence, Complots, Riots, unlawfull Games, or any ſuch diſturbance of peace and quiet of the Realme, to commit the perſons whom hee ſuppoſeth offenders, to priſon, and to charge the Conſtable or Sheriffe to bring them thither, the Goaler to receive them, and keep them till hee and his fellowes doe meet. A few lines ſigned with his hand is enough for that purpoſe: theſe doe meet foure times in the yeere, that is in each quarter once, to enquire of all the miſdemeanours aforeſaid: at which dayes the Sheriffe

riffe or his under-sheriffe with his Bailiffs, be there to attend upon him, who must prepare against that time foure Enquests, & foure and twenty Yeomen a piece, of divers hundreds in the Shire, & besides, one which is called the great Enquest out of the body of the Shire mingled with all. These five Enquests are sworne before them to Enquire of all Heretiks, Traytors, Thefts, Murthers, Manslaughters, Rapes, false Moniers, Extortioners, Riots, Routs, forcible Entries, unlawfull Games, and all such things as be contrary to the Peace & good order of the Realm, & to bring in their verdict. If they among themselves upon their owne knowledge doe finde any culpable, they cause one of the Clarks to make the Bill. And if any bee there to complaine upon any man for these faults, hee putteth in his Bill, which Bill is presented first to the Justices sitting upon the Bench, to see if it be conceived in forme of law; which done, the complainant doth deliver it to one

This is not alwaies and in all places observed but onely concerning the graund Enquest.

of these Enquests, and after the complaint is sworne, he declareth to them what hee can, for the proofe of it. And if they find it true, they doe nothing but write on the back-side of it, *billa vera*, as ye would say, *scriptum verum*, or *accusatio justa*, or *reus est qui accusatur*: Then he who is there named is called indicted. The manner of the Bill is such, *Inquiratur pro Domino Rege.*

If they doe not find it true, they write on the back-side, *Ignoramus*, and so deliver it to the Justices, of whom it is rent in pieces immediately: he that is indicted is accounted a lawfull prisoner, and after that time looked more straitly unto. But this indictment is no conviction: yet if he be indicted, and be not already in prison, the Sheriffe if hee can find him, bringeth him into prison; if hee cannot finde him, processe is made out against him, to render himselfe prisoner, or else hee shall be out-lawed. So hee is called three times in divers coun-

tie

tie dayes to render himselfe to the Law. The fourth is called the Exigent, by which he is out-lawed not rendring himselfe, as yee would say, *Exactus* or *Actus in exilium*. The Out-law loseth all his goods to the King for his disobedience. But if after he will render himselfe to answer to the Law, and shew some reasonable cause of his absence, many times of grace his out-lawry is pardoned. These meetings of the Justices of Peace foure times in the yeere, be called quarter Sessions, or Sessions of enquiry; because that nothing is there determined touching the Malefactors, but only the custody of them: and this kind of proceeding, which is by inquisition of the twelve men within themselves, and their owne consciences, or by denunciation of him that putteth in his Bill to the twelve, is called at the Kings suit; and the King is reckoned the one party, and the prisoner the other. The Justices of the Peace doe meet also at other times

by commandement of the Prince upon ſuſpition of warre, to take order for the ſafety of the Shire, ſometimes to take muſters of Harneſſe and able men, and ſometimes to take order for the exceſſive wages of ſervants and labourers, for exceſſe of apparell, for unlawfull Games, for Conventicles and evill order in Alehouſes and Tavernes, for puniſhment of idle and Vagabond perſons, and generally, as I have ſaid, for the good government of the Shire, the Prince putteth his confidence in them. And commonly every yeere, or each ſecond yeere in the beginning of Summer or afterwards (for in the warme time the people for the moſt part bee more unruly) even in the calme time of Peace, the Prince with his Councell chooſeth out certaine Articles out of penall Lawes already made for to repreſſe the pride and evill rule of the popular, and ſendeth them downe to the Juſtices, willing them to looke upon thoſe points, and after they have met

met together, and consulted among themselves, how to order that matter most wisely and circumspectly, whereby the people might be kept in good order and obedience after the Law, they divide themselves by three or foure: and so each in his Quarter taketh order for the execution of the said Articles.

And then within certaine space they meet againe and certifie the Prince, or his Privie Councell, how they doe find the Shire in rule and order touching those points, and all other disorders. There was never in any Common-wealth devised a more wise, a more dulce and gentle, nor a more certaine way to rule the people, whereby they are kept alwayes, at it were, in a bridle of good order, and sooner looked unto, that they should not offend, then punished when they have offended. For seeing the chiefe amongst them, their Rulers have this speciall charge, and do call upon it, and if occasion so do present; one or two presently are either

ther punished, or sent to prison for disobedience to those old Orders and Lawes, they take a feare within themselves, they amend, and do promise more amendment: So that it is as a new furbishing of the good Lawes of the Realm, and a continuall repressing of Disorders, which doe naturally rest among men.

But as the invention of this, and the use and execution thereof is the most benefit that can bee devised for the Common-wealth of England: so when it shall bee misused, dissembled with, or be condemned, and be done *pro forma tantum*, and as they terme it in France, *Par maniere d' acquit* only, it will bee the present ruine (though not at the first perceived) of the Common-wealth. Of which the fault may bee as well in the Commanders for not making good choice, what, and how they command, as in the commanded, for not executing that which is commanded.

CHAP.

Chap. XXIII.

Of Hue and Cry, and recognisance taken upon them that may give evidence.

BY the old Law of England, if any theft or robbery bee done, if hee that is robbed, or he that seeth or perceiveth that any man is robbed, do levie Hue and Cry, that is to say, doe cry and call for aid, and say that a theft or robbery is done contrary to the Princes peace and assurance: the Constable of the Village to whom hee doth come, and so make that cry, ought to raise the Parish to aid him, and seeke the thiefe, and if the thiefe bee not found in that Parish to goe to the next, and raise that Constable, and so still by Constables and them of the Parish one after another. This Hue and Cry from Parish to Parish is carried till the thiefe or robber be found.

That

That Pariſh which doth not his dutie, but lets by their negligence the thiefe to depart, doth not only pay a fine to the King, but muſt repay to the party robbed his dammages: So that every Engliſh man is a Sergeant to take the thiefe, and who ſheweth himſelfe negligent therein, doe not only incurre evill opinion therefore, but hardly ſhall eſcape puniſhment: what is done with the thiefe or robber when he is taken, I ſhall ſhew you hereafter. The ſame manner is followed if any man be ſlaine, for ſtraight the murtherer is purſued of every man till he bee taken. So ſoone as any is brought to the Juſtices of Peace by this Hue and Cry, by the Conſtable, or any other who doth purſue the malefactor, hee doth examine the malefactor, and writeth the examination, and his confeſſion: then he doth bind the party that is robbed, or him that ſueth, and the Conſtable, and ſo many as can give evidence againſt the malefactor, to bee at the

next Seſſions of Goale delivery, to give their evidence for the King. He bindeth them in Recogniſance of ten pound, twenty pound, thirty pound, forty, or an hundred pound, according to his diſcretion, and the quality of the crime, which certified under his hand, is levied upon the Recogniſance, if they faile of being there.

CHAP. XXIV.

Of the Coroner.

BUt if any Man, Woman, or child, be violently ſlaine, the murtherer not knowne, no man ought or dare bury the body before the Coroner hath ſeene it. The Coroner is one choſen by the Prince of the meaner ſort of Gentlemen, and for the moſt part a man ſeene in the Lawes of the Realme, to execute that Office. And if the perſon ſlaine (ſlaine I call here, whoſoever he bee,

Man,

Man, Woman, or Child, that violently commeth to his death, whether it be by knife, poyſon, cord, drowning burning, ſuffocation, or otherwiſe, be it by his owne fault, or default, or by any other; if (I ſay) the perſon ſlaine bee buried before the Coroner doe come (which for the moſt part men dare not do) he doth cauſe the body to be taken up againe, and to be ſearched, and upon the ſight of the body ſo violently come to his death, hee doth empannell an Enqueſt of twelve men or moe, of thoſe which come next by, bee they ſtrangers or inhabitants, which upon their oathes, and by the ſight or view of the body, and by ſuch informations as they can take, muſt ſearch how the perſon ſlaine came to his death, and by whom, as the doer or cauſe thereof. Theſe are not encloſed into a ſtraight place (as I told before of other Enqueſts) but are ſuffered to goe at large, and take a day ſometime after twenty or thirty dayes, more

more or leſſe, as the fact is more evident, or more kept cloſe, to give their evidence; at which day they muſt appeare there againe before the ſaid Coroner to give their verdict. So ſometime the perſon to have ſlaine himſelfe, ſometime the brother, the husband, the wife, the ſiſter, ſome of acquaintance, or ſtranger, ſuch as God will have revealed, bee taken. For whoſoever they doe find as guiltie of the murther, hee is ſtraight committed to priſon; and this is againſt him in the nature of an indictment, which is not a full condemnation, as yee ſhall ſee hereafter.

The empanelling of this Enqueſt, and the view of the body, and the giving of the Verdict, is commonly in the ſtreet in an open place, and in *Corona populi*: but I take rather that this name commeth becauſe that the death of every ſubject by violence is accounted to touch the Crown of the Prince, and to be a detriment unto it, the Prince

accounte-

accounting that his ſtrength, and power, and Crowne doth ſtand and conſiſt in the force of his people, and the maintenance of them in ſecurity and peace.

CHAP. XXV.

Of the Conſtables.

THeſe men are called in the elder books of our Lawes of the Realme, *Cuſtodes pacis*: and were at the firſt in greater reputation then they be now. It may appeare there was a credit given unto them not altogether unlike to that which is now given to the Juſtices of peace. To this day if any affray chance to be made, the Conſtables ought and will charge them that be at debate, to keepe to the Princes peace, and whoſoever refuſeth to obey the Conſtable therin, all the people will ſet ſtraight upon him, and by force make him to render himſelfe to bee

orde-

ordered. Likewiſe if any bee ſuſpected of theft, or receiving, or of murther, or of man-ſlaughter, the Conſtable may take ſuch perſons; yea, enter into any mans houſe with ſufficient power, to ſearch for ſuch men till he find them: and if he ſee cauſe, keepe the ſuſpected perſons in the ſtocks, or cuſtody, till he bring them before a Juſtice of the Peace to bee examined. But for ſo much as every little Village hath commonly two Conſtables, and many times Artificers, Labourers, and men of ſmall ability be choſen unto that office, who have no great experience, nor knowledge, nor authority: the Conſtables at this preſent (although this they may doe upon their own authority) yet they ſeeme rather to be as it were the executors of the commandement of the Juſtices of Peace. For the Juſtice of Peace as ſoone as he underſtandeth by complaint that any man hath Stollen, Robbed, ſlaine; or any ſervant or labourer, without licence, hath departed

One or two Conſtables Headborowes or Tithingmen.

parted out of his Masters service, o
any that liveth idle and suspectedly
knowing once in what Parish he i
hee writeth to the Constable of th
Parish, commanding him in th
Princes name, to bring that man be
fore him: The Constable dareth no
disobey. The man is brought an
examined by the Justice, and if th
Justice doe find cause, he commit
teth him to the same Constable t
convey him further to the Prince
Goale, where the party must lye
till the Justices of Peace do meet
either at their quarter Sessions, o
at their Goale delivery, and that th
Law hath either condemned or ac
quitted him. These Constables ar
called in some places Headbo
rowes, in some places Tithingmen
and be like to them who are calle
Consuls in many Townes and Vil
lages in *France*. The Constable
are commonly made and sworne a
the Leets of the Lords, chosen there
to be thy homage; and they keep
that Office sometime two, three, o
foure

foure yeers, more or leſſe, as the Pariſh doth agree. What Headborough doth betoken, it is eaſily knowne, our language doth declare him as the head or chiefe of the Borough or Village: likewiſe Tithingman is the chiefe of the Tithing. Conſtable ſeemeth to come of our old Engliſh word *Kinning*, which is *Kinningſtable*, as yee would ſay, a man eſtabliſhed by the King, for ſuch things as appertaine to Pleas of the Crowne, and conſervation of the Kings peace, and, as I ſaid, at the firſt, were in ſome more reputation, approching to that authority, which the Juſtices of Peace now do hold.

Kinningſtable is Regis virgula, the Kings rod or wand, ſignifying the Kings power or authority; a repreſentation wherof is the uſe of maces & white ſtaves by Officers in the Common-wealth.

CHAP. XXVI.

Of the Seſſions of Goale delivery, and the definitive proceedings in cauſes criminall.

HOw theeves and murtherers, and other malefactors againſt the

the Crowne and Peace, are taken and brought into hold to answer to justice, partly by Hue and Cry, partly by information, and partly by the diligence of the Justices of Peace and the Constables: and how at the quarter Sessions they be indicted, or else by the Coroners, yee have heard before. Endictment (as yee may perceive by that which is also gone before) is but a former judgement of twelve men, which bee called Enquirers, and no definitive sentence; but that which in Latine is called *Præjudicium*, it doth but shew what opinion the Country hath of the Malefactor: and therefore commonly men be indicted absent, not called to it, nor knowing of it. For though a man bee indicted, yet if when he come to the arraignment, there bee no man to pursue further, nor no evidence of witnesse or other tryall and *Indices* against him, he is without difficulty acquitted. No man that is once indicted can bee delivered without arraign-

ment:

ment: For as twelve have given a prejudice againſt him, ſo twelve againe muſt acquit or condemne him. But if the priſoner be not indicted, but ſent to priſon upon ſome ſuſpitious behaviour, and none doe purſue him to the judgement, firſt being proclaimed thus, A.B. priſoner ſtandeth here at the barre, if any man can ſay any thing againſt him, let him now ſpeak, for the priſoner ſtandeth at his deliverance: If no man doe then come, he is delivered without any further proceſſe or trouble, agreeing firſt with the Goaler for his fees, And theſe bee called acquitted by proclamation. Twice in every yeere, the one is commonly in Lent, what time there is vacation from pleading in Weſtminſter Hall; the other is in the vacation in Summer; The Prince doth ſend down into every Shire of England certaine of his Judges of Weſtminſter Hall, and ſome Sergeants at the Law with Commiſſion to heare and determine joyntly with the Juſtices

stices of the Peace, all matters Criminall, and all prisoners which be in the Goales. These Judges doe goe from Shire to Shire till they have done their circuit of so many Shires as bee appointed to them for that yeere: at the end of the terme going before their circuit, it is written and set up in Westminster Hall on what day and in what place they will bee. That day there meeteth all the Justices of the Peace of that Shire, the Sheriffe of that Shire, who for that time heareth their charges, and after asketh allowance for it in the Exchequer.

The Sheriffe hath ready for criminall causes (as I writ before at the Sessions of inquirie) foure, five, or six Enquests ready warned to appeare that day to serve the Prince, and so many more as hee is commanded to have ready to goe in civill matters betwixt private men, which they call *nisi prius*, because that word is in the Writ.

In the Towne-house, or in some open

open or common place, there is a tribunall or a place of judgement, made aloft upon the higheſt bench, there ſit the Judges, which be ſent downe in commiſſion, in the midſt. Next them on each ſide ſit the Juſtices of peace, according to their degree. On a lower bench before them, the reſt of the Juſtices of Peace, and ſome other Gentlemen, or their Clarks. Before theſe Judges and Juſtices there is a Table ſet beneath, at which ſitteth the *Cuſtos Rotulorum*, or keeper of Writs. *Th'eſchetor*, the under-ſheriffe, and ſuch Clarks as doe write. At the end of that Table there is a Barre made with a ſpace for the Enqueſts, and twelve men to come in when they are called: behinde that ſpace another Barre, and there ſtand the priſoners which bee brought thither by the Jayler, all chayned one to another. Then the Cryer cryeth, and commandeth ſilence. One of the Judges briefly telleth the cauſe of their comming,

and giveth a good leſſon unto the people. Then the priſoners are called for by name and bidden to anſwer to their names. And when the *Cuſtos Rotulorum* hath brought forth their indictments, the Judges doe name one or two, or three of the priſoners that are indicted, whom they will have arraigned. There the Clarke ſpeaketh, firſt to one of the priſoners: A.B. come to the Barre, hold up thy hand. Then the Clarke goeth on: A.B. thou by the name of A.B. of ſuch a Towne, in ſuch a Country art endicted, that ſuch a day, in ſuch a place, thou haſt ſtolne with force & armes an horſe, which was ſuch an ones, of ſuch colour, to ſuch a valour, and carried him away felonioufly, and contrary to the peace of our Soveraign Lord the King. What ſayeſt thou to it, art thou guilty or not guilty? If he will not anſwer, or not anſwer directly guilty or not guilty, after he hath beene once or twice ſo interrogated, hee is judged mute,

that

that is, dumbe by contumacie, and his condemnation is to be preſſed to death, which is one of the cruelleſt deaths that may bee: he is laid upon a Table, and another upon him, and ſo much waight of ſtones or lead laid upon that table, while as his body be cruſhed, and his life by that violence taken from him. This death ſome ſtrong and ſtout hearted man doth chooſe: for being not condemned for felony, his bloud is not corrupted, his lands nor goods confiſcate to the Prince, which in all caſes of felony are commonly loſt from him and his heires, if he be fore-judged, that is, condemned for a felon by the law. If he confeſſe the inditement to be true, then when he is arraigned, no twelve men goe upon him: there reſteth but the Judges ſentence of the paine of death.

If hee plead not guilty, as commonly all Theeves, Robbers, and murtherers doe, though they have confeſſed the fact before the Juſtice

of the Peace that examined them, though they be taken with the manner, which in Latine they call *in flagranti crimine*, howsoever it be, if hee plead there not guiltie, the Clarke asketh him how hee will bee tried, and telleth him he must say, by God and the Country, for these be the words formall of his tryall after inditement, and where the Prince is party. If the prisoner say so, I will be tryed by God and the Country, then the Clarke replieth, Thou hast beene indited of such a crime, &c. Thou hast pleaded not guiltie, being asked how thou wilt be tried, thou hast answered by God and by the Countrie: Loe these honest men that be come here, be in the place & stead of the Country; and if thou hast any thing to say to any of them, looke upon them well and now speake, for thou standest upon thy life and death. Then calleth he in the first juror. *B.C.* come to the Booke, and so he giveth him an oath to go uprightly betwixt the

Prince

Prince and the priſoner, &c. If the priſoner objecteth nothing againſt him, he calleth another, and ſo another, till there be twelve or above: and for the moſt part the priſoner can ſay nothing againſt them, for they are choſen but for that day, and are unknowne to him, nor they know not him, as I ſaid, being ſubſtantiall Yeomen that dwell about the place, or at leaſt in the Hundred, or neere where the felonie is ſuppoſed to be committed, men acquainted with daily labour and travell, and not with ſuch idle perſons as be ready to doe ſuch miſchiefes.

When the Enqueſt is full, and the priſoner hath objected nothing againſt them, as indeed ſeldome he doth, for the cauſe above rehearſed; the Clark ſaith to the Crier, *Countes*, (in French as yee would ſay reckon) and ſo nameth all thoſe that be on the Queſt. The Cryer at every name crieth aloud, one, then two, three, foure, and ſo till the number be full of twelve or more, and then

ſaith, good men and true: and then ſaith aloud: If any can give evidence, or can ſay any thing againſt the priſoner, let him come now, for he ſtandeth upon his deliverance. If no man come in, then the Judge asketh who ſent him to priſon, who is commonly one of the Juſtices of Peace: he (if he be there) delivereth up the examination which hee tooke of him, and underneath the names of thoſe whom he hath bound to give evidence: although the Malefactor hath confeſſed the crime to the Juſtice of the peace, and that it appear by his hand and confirmation, the twelve men will acquit the priſoner, but they which ſhould give evidence pay their Recogniſance. Howbeit this doth ſeldome chance, except it be in ſmall matters, and where the Juſtice of Peace who ſent the priſoner to the Gaole is away. If they which bee bound to give evidence come in, firſt is read the examination, which the Juſtice of peace doth give in, then is heard (if he be there) the

the man robbed what hee can say, being first sworne to say the truth, and after the Constable, and as many as were at the apprehension of the Malefactor: and so many as can say any thing being sworne one after another to say the truth. These bee set in such a place as they may see the Judges and the Justices, the Enquest and the prisoner, and heare them, and be heard of them all. The Judge after they be sworne, asketh first the partie robbed, if hee know the prisoner, and biddeth him looke upon him: he saith, yea; the prisoner sometime saith, nay. The party Pursuivant giveth good Ensignes, *verbi gratia*, I know thee well enough, thou robbedst mee in such a place, thou beatedst me, thou tookedst my horse from me, and my purse, thou hadst then such a coat, and such a man in thy company: The Thiefe will say, no, and so they stand a while in altercation, then he telleth all that hee can say: after him likewise all those who were at the apprehension

of the priſoner, or who can give any *indices* or tokens, which we call in our language evidence againſt the Malefactor. When the Judge hath heard them ſay enough, he asketh if they can ſay any more: If they ſay, no, then he turneth his ſpeech to the Enqueſt, Good men (ſaith he) ye of the Enqueſt, yee have heard what theſe men ſay againſt the priſoner, you have alſo heard what the priſoner can ſay for himſelfe, have an eye to your oath, and to your duty, and do that which God ſhall put in your minds to the diſcharge of your conſciences, and marke well what is ſaid. Thus ſometime with one Enqueſt is paſſed to the number of two or three priſoners. For if they ſhould be charged with more, the Enqueſt will ſay, My Lord, wee pray you charge us with no more, it is enough for our memory. Many times they are charged but with one or two. At their departing, they have in writing nothing given them but the indictment, the Clarke repeating to

them

them the effect of it, and ſhewing more, that if they find him guiltie, they ſhall inquire what goods, lands and tenements the ſaid perſon had at the time of the felony committed: and if they find any, they ſhall bring it in: if none, they ſhall ſay ſo. If they find him not guilty they ſhall enquire whether he fled for the felonie or no.

And there is a Bailiffe to wait upon them, and to ſee that no man do ſpeak with them, and that they have neither bread, drinke, meat, nor fire brought to them, but there to remaine in a Chamber together till they agree. If they be in doubt of any thing that is ſaid or would heare againe ſome of them that gave evidence, to interrogate them more at full, or if any that can give evidence came late, it is permitted that any that is ſworne to ſay the truth may bee interrogated of them to informe their cõſciences. This is to be underſtood, although it will ſeeme ſtrange to all nations, that do uſe the Civill

Law of the Romane Emperours, that for life and death there is nothing put in writing but the indictment only. All the rest is done openly in the presence of the Judges, the Justices, the Enquest, the prisoner, and so many as will or can come so neere as to heare it, and all depositions and Witnesses given aloud, that all men may heare from the mouth of the depositors and Witnesses what is said. As of this, so is it of all other prisoners after the same sort. By that time that the Enquests for the prisoners bee dispatched, it is commonly dinner time: the Judges and Justices goe to dinner, and after dinner doe returne to the same place: if the Enquest be not ready for the prisoners, they goe to some other Enquests of *Nisi prius*, which be civill matters and private, to drive out the time. The Enquests have no sooner agreed upon their charge one way or other, but they tell the Bayliffe, and pray to be heard, and considering that they be by themselves, all this while

as

as prisoners, as I said before, it is no marvell though they make expedition. The prisoners be sent for againe to the Barre, the Enquest which hath agreed, is called for, each one of the Jury by his name, to which hee answereth. Then the Clarke asketh if they be agreed, and who shall speake for them: one or more saith yea; he that speaketh for them all is called the fore-man, and commonly it is he that is first sworne: then the prisoner is bidden to hold up his hand. The Clarke saith unto him, Thou art indicted by the name of *A* of such a place, &c. being therefore arraigned thou pleadest thereto not guilty, being asked how thou wouldst bee tried, thou saidst, *By God and thy Countrey.* These honest men were given to thee by God and thy Prince for thy Country: Hearken what they say. Then hee asketh of the Enquest, what say you? Is hee guiltie or not guiltie? The fore-man maketh answer in one word, guilty; or in two,

not

not guiltie: the one is deadly, the other acquitteth the priſoner. So that neither Judge nor Juſtice hath to doe, or can reverſe, alter, and change the matter: if they ſay, guiltie. The Clarke asketh what Lands, Tenements, or Goods the Priſoner had at the time of the felony committed, or at any time after. Commonly it is anſwered, that they know not, nor it ſhall not greatly need, for the Sheriffe is diligent enough to enquire of that, for the Princes and his own advantage, and ſo is the Eſcheatour alſo.

Of him whom the twelve pronounce guiltie, the Judge asketh what he can ſay for himſelfe: if hee can read, he demandeth his Clergie. For in many felonies, as in theft of Oxen, Sheepe, Money, or other ſuch things, which bee no open robberies by the high-way ſide, nor aſſaulting one by night in his houſe, putting him that is there in feare, ſuch is the favour of our Law, that for the firſt fault the Felon

lon ſhall bee admitted to his Clergie, for which purpoſe, the Biſhop muſt ſend one with authoritie under his Seale to bee Judge in that matter at every Goale delivery. If the condemned man demandeth to be admitted to his Booke, the Judge commonly giveth him a Pſalter, and turneth to what place he will. The Priſoner readeth ſo well, as hee can (God knoweth ſometime very ſlenderly,) then he asketh of the Biſhops Commiſſary, *Legit ut Clericus?* The Commiſſary muſt ſay *legit* or *non legit*, for theſe be the words formall, and our men of Law bee very preciſe in their words formall. If hee ſay *legit*, the Judge proceedeth no further to ſentence of death: if he ſay *non*, the Judge forthwith, or the next day proceedeth to ſentence, which is done by word of mouth onely. Thou *A.* haſt beene indicted of a ſuch a felony, and therefore arraigned, thou haſt pleaded not guilty, and put thy ſelfe upon God and thy Coun-

Countrey, they have found thee guiltie, thou haſt nothing to ſay for thy ſelfe, Law is, thou ſhalt returne to the place from whence thou cameſt, from thence thou ſhalt goe to the place of execution, there thou ſhalt hang till thou bee dead. Then hee ſaith to the Sheriffe, Sheriffe doe execution: hee that claimeth his Clergie, is burned forthwith in the preſence of the Judges, in the brawne of his hand with a hot iron, marked with the letter *T.* for a Thiefe, or *M.* for a Man-ſlayer, in caſes where Clergie is admitted, and is delivered to the Biſhops Officer to bee kept in the Biſhops priſon; from whence, after a certaine time, by another Enqueſt of Clarkes hee is delivered and ſet at large: but if he be taken and condemned the ſecond time, and his marke eſpied, he goeth to hanging. He whom the Enqueſt pronounceth not guiltie, is acquitted forthwith, and diſcharged of priſon, paying the Gaolers fees;

fees; and if hee know any private man who purchased his indictment, and is able to pursue it, he may have an action of Conspiracie against him, and a large amends: but that case chanceth seldome.

CHAP. XXVII.

Certaine orders peculiar to England, touching punishments of Malefactors.

FOr any Felony, Man-slaughter, Robbery, Murther, Rape, and such capitall crimes as touch not Treason and *laesam Majestatem*, wee have by the Law of England no other punishment but to hang till they bee dead: when they be dead, every man may burie them that will, as commonly they be: Heading, tormenting, dismembring either arme or legge, breaking upon the wheele, empailing, and such cruell torments, as be used in other nations

tions by the order of the Law, wee have not: and yet as few murthers commited as any where: nor it is not in the Judges power to aggravate or mitigate the punishment of the Law, but in the Prince onely, and his Privie Councell, which is marvellous seldome done. Yet notable murtherers many times by the Princes commandement after they bee hanged with cord till they bee dead, be hanged with chaines while they rot in the ayre.

If the Wife kill her Husband, she shall be burned alive. If the servant kill the Master, he shall be drawne on a hurdle to the place of execution: it is called *petit treason*. Impoisoners, if the person die thereof, by a new Law made in King *Henrie* the Eights time, shall be boiled to death: but this mischiefe is rare, and almost unknowne in England. Attempting to impoison a man, or lying a waite to kill a man, though hee wound him dangerously, yet if death follow not, it is no felony by the

the Law of England : for the Prince hath loſt no man, and life ought to be given we ſay for life onely.

And againe, when a man is murdered, all bee principalls and ſhall die, even he that doth but hold the candle to give light to the Murtherers. For mitigation and moderation of paines, is but corruption of Judges, as wee thinke. Likewiſe torment or queſtion, which is uſed by the order of the Civill Law, and cuſtome of other Countries, to put a Malefactor to exceſſive paine, to make him confeſſe of himſelfe, or of his fellowes, or complices, it is not uſed in England, it is taken for ſervile. For how can hee ſerve the Common-wealth as a free-man, who hath his bodie ſo haled or tormented, if hee be not found guiltie, and what amends can bee made him? And if hee muſt die, what crueltie is it ſo to torment him before? Likewiſe, confeſſion by torment is eſteemed for nothing; for if he confeſſe at the judgement, the tri-

all

all of the twelve goeth not upon him; if he denie the fact, that which hee said before hindereth him not. The nature of Englishmen is to neglect death, to abide no torment: And therefore hee will confesse rather to have done any thing; yea, to have killed his own father, then to suffer torment: for death our Nation doth not so much esteeme as a meere torment. In no place shall you see malefactors goe more constantly, more assuredly, and with lesse lamentation to their death then in England.

Againe, the people not accustomed to see such cruell torments will pitie the person tormented, and abhorre the Prince and the Judges who should bring in such cruelties amongst them, and the twelve men the rather absolve him. There is an old Law of England, that if any Jayler shall put any prisoner, being in his custody, to any torment, to the intent to make him an approver, that is to say, an accuser, or *Index* of his complices, the Jayler shall

shall die therefore as a Felon. And to say the truth, to what purpose is it to use torment? For whether the Malefactor confesse or no, and whatsoever hee saith, if the Enquest of twelve doe find him guiltie, he dieth therefore without delay. And the Malefactor seeing there is no remedie and that they bee his Countrimen, and such as hee hath himselfe agreed unto, if they doe find him worthy death, yeelds for the most part unto it, and doth not repine, but doth accommodate himselfe to aske mercy of God.

The nature of our Nation is free, stout-hault, prodigall of life and blood: but contumely, beating, servitude, and servile torment and punishment, it will not abide. So in this nature and fashion, our ancient Princes, and *Legislators* have nourished them as to make them stout-hearted, couragious, and Souldiers, not Villaines and slaves; and that is the scope almost of all our policie.

The

The twelve as soone as they have given their Verdict are dismissed to goe whither they will, and have no manner of commoditie and profit of their labour, and Verdict, but only doe service to the Prince and Common-wealth.

CHAP. XXVIII.

Of Treason, and the triall which is used for the higher Nobilitie and Barons.

THe same order touching tryall by Enquest of twelve men is taken in treason, but the paine is more cruell. First, to bee hanged, taken downe alive, his bowels taken out, and burned before his face, then to be beheaded, and quartered, and those set up in divers places. If any Duke, Marquesse, or any other of the degrees of a Baron, or above Lord of the Parliament, be appeached of treason, or any other Capitall crime,

crime, he is judged by Peeres and equalls: that is, the Yeomanrie doth not go upon him, but an Enqueſt of the Lords of the Parliament, and they give their voyce, not one for all, but each ſeverally as they doe in Parliament, beginning at the youngeſt Lord. And for Judge one Lord ſitteth, who is Conſtable of England for that day. The judgement once given, he breaketh his ſtaffe, and abdicateth his Office. In the reſt there is no difference from that above written.

THE

THE THIRD BOOKE.

CHAP. I.

Of that which in other Countries is called Appellation, or Provocation, to amend the judgement of sentence definitive, which is thought unjustly given in causes criminall.

IF the Enquest of twelve men doe seeme to the Judges and the Justices to have gone too violently against the evidence given in matters criminall, either it is, that upon slender evidence they have pronounced him guiltie, whom the Judges and most part of the Justices think by the evidence not fully proved

ved guiltie, or for some other cause, doe thinke the person rather worthy to live then to die, The Enquest is nevertheless dismissed: but when the Judges should pronounce the sentence of death upon the person found guiltie, hee will deferre it, which is called to reprive the prisoner, (that is to say, to send him againe to prison) and so declare the matter to the Prince, and obtaineth after a time for the prisoner his pardon: and as for provocation or appeale, which is used so much in other Countries, it hath no place in England after sentence given by the twelve, whereby the person is found guiltie or not guiltie: but, without that repriving, the sentẽce is straight put in execution by the Sheriffe. And if they escape, or die another death, the Sheriffe escapeth not to pay a great fine and ransome at the Princes mercy: if having pregnant evidence, nevertheless, the twelve doe acquit the Malefactor; which they will doe sometime, & especially

if

if they perceive either one of the Justices or of the Judges, or some other man to pursue too much, and too maliciously the death of the prisoner, and do suspect some subornation of the witnesse, or of them which do give evidence, and sometime if they perceive the Judge would have the prisoner escape, and in repeating the evidence do give them thereof some watch-word. But if they doe (as I have said) pronounce not guilty upon the prisoner, against whom manifest witnesse is brought in, the prisoner escapeth: but the twelve not only rebuked by the Judges, but also threatned of punishment, and many times commanded to appeare in the Starre-chamber, or before the Privie Councell for the matter. But this threatning chanceth oftner then the execution therof, and the twelve answere, with most gentle words, they did it according to their consciences, and pray the Judges to bee good unto them, they did as they thought right, and as they accorded

all, and so it passeth away for the most part. Yet I have seene in my time (but not in the raigne of the King now) that an Enquest for pronouncing one guilty of treason contrary to such evidence as was brought in, were not only imprisoned for a space, but a huge fine set upon their heads, which they were faine to pay: Another Enquest for acquitting another, beside paying a fine money, put to open ignominie and shame. But those doings were even then of many accounted very violent, tyrannicall, and contrary to the liberty and custome of the Realme of England. Wherefore it commeth very seldome in use: yet so much at a time the Enquest may be corrupted, that the Prince may have cause, with Justice, to punish them: For they are men, and subject to corruption and partiality, as others be.

CHAP.

CHAP. II.

What remedie is, if ſentence bee thought unjuſtly given.

IN cauſes civill there is another order: for if the manner be pleaded to the iſſue, and the twelve men thereupon impanelled, the evidence brought and pleaded before them on both parties, the twelve ſeeme to be partiall, and to have given ſentence cõtrary to the evidence ſhewed unto them, the party grieved may bring againſt them, and the partie for whom the ſentence is given, a Writ of attaint: and whereas before upon the firſt Queſt commonly they ſhall be Yeomen, now upon this attaint muſt goe foure and twentie Gentlemen dwelling within the Shire, and twelve at the leaſt of the hundreth where the land lieth. The matter is pleaded againe before the ſame Judges. The party defendant is not only now he who claimeth the land, but alſo all and every of the

Yeomen, who by their Verdict did give it him.

There must in the attaint no more evidence be brought in, but only that which was brought in and alledged before the first Enquest. And if this second Enquest of foure and twenty Gentlemen do adjudge as the first did, the Plaintiffe shall not only lose the land, but also pay a fine to the Prince, & dammages to the party. If this second Enquest do find that the first Enquest have gone partially, and against the evidence brought in before them, the first Enquest is called attainted, & accounted as perjured and infamed. The Prince had before, the waste of all lands and possessions with other punishments, which at this present by a law made by Parliament in the time of King *Henry* the Eight is abolished, and now by that law or act of Parliament, beside other punishment, each of the Quest attainted payeth unto the Prince and partie, five pounds, if it be under fortie pounds:

pounds: and if above, then twentie pounds. Attaints bee very seldome put in ure, partly becauſe the Gentlemen will not meete to ſlander and deface the honeſt Yeomen their neighbours: ſo that at a long time, they had rather pay a meane fine then to appeare and make the Enqueſt. And in the meane time they will intreat ſo much as in them lyeth the parties to come to ſome cõpoſition & agreement among themſelves; as lightly they do, except either the corruption of the Enqueſt be too evident, or the one partie is too obſtinate and headſtrong. And if the Gentlemen do appeare, gladlier they will confirme the firſt ſentence, for the cauſes which I have ſaid, then goe againſt it. But if the corruption bee too much evident, they will not ſticke to attaint the firſt Enqueſt: yet after the Gentlemen have attainted the Yeomen, before the ſentence bee given by the Judge (which ordinarily for a time is deferred) the parties be agreed, or

one of them bee dead the attaint ceaseth.

If any time before the sentence be given or put in execution, there be found some such error in the Writ, in the processe or forme (as our Lawyers be very precise and curious of their formes) that it may be revokable, it is brought a fresh to the disputation by a Writ of error, and all that is done, reversed: but that is common to all other Countries, where the civill law is used, which they call *de nullitate processus*, and serveth both in England and in other places, as well in causes criminall, as civill. Other kind of Appellation to revoke processes, and to make them of short, long; of long infinite; which is used by the civill law, wee have not in our common law of England. By supplication to the Prince, and complaint to the Chancellour upon suppose all of losse, or lack of the evidence, or too much favour in the Countrey, & power of the adversary, there is in our countrey

trey as well as theirs, both ſtopping and prolonging of Juſtice. For what will not buſie-heads and lovers of trouble, never being ſatisfied, invent in any Countrey to have their deſire, which is to vexe their neighbors, and to live alwaies in diſquiet? Men, even permitted of God, like flies, and lice, and other vermin, to diſquiet them who would employ themſelves upon better buſines and more neceſſary for the Commonwealth. Theſe men are hated and feared of their neighbours, loved and aided of them which gaine by proceſſe, and waxe fat by the expence and trouble of others. But as theſe men ordinarily ſpend their owne thrift, and make others againſt their wils to ſpend theirs: ſo ſometime being throughly knowne, they doe not onely live by the loſſe like evill husbands, but beſide rebuke and ſhame, by the equitie of the Prince and Courts Soveraigne, they come to be extraordinarily puniſhed, both corporally, and by their purſe; which

thing in my mind is as royall and Princely an act, and so beneficiall to the Common-wealth as in so small a matter a King or Queene can doe, for the repose and good education of their subjects.

CHAP. III.

Of that which in England is called appeale, in other places accusation.

IF any man hath killed my father, my sonne, my wife, my brother or next kinsman, I have choice to cause him to be indited, giving information to the Enquest of enquiry (although hee chance to escape the Constable or Justices hands, & therefore not to bee apprehended) and thereupon to procure him to be outlawed, or else within a yeere and a day I may enter my appeale, that is mine accusations against him: If I began first to pursue him by information or denunciation to inditement,

ment, I am now no party, but the Prince, who for his dutie to God and his Common-wealth and ſubjects, muſt ſee juſtice executed againſt all malefactors & offenders againſt the Peace, which is called Gods and his, and doth in ſuch manner as I have ſaid before. If I leave that and will appeale, which is, proffer my accuſation againſt him who hath done to me this injury, the defendant hath this advantage to put himſelfe to the Jury, which is, to that which before is ſaid, to have that iſſue and triall by God and his Country, whereof the faſhion I have at large declared: or to demand the tryall by battell, wherin both the parties muſt either combate in perſon, or elſe find other for them, who be called in our law Champions, or Campions, ſome do interpret them ἀθλητὰς, becauſe they be men choſen, fat, luſty, fit for the feate, or as the French doe terme them *Adroicts aux armes*: which fight it out by μονομαχία, or, as now they do call it, *duellum*, or the camp,

which shall have all things equall: but according as *Mars* giveth the victory, so the Law is judged; the one as *peractus reus*, the other as *calumniator*, to suffer the paine of death. So that by the great assize there is no appellation but death or life to the defendant; but this is more dangerous and equall, for the one or the other must die.

So is it not in the grand assize, for the *reus* or defendant is only in danger of death. Short it is, from day to Sunne set, the quarrell is ended, or sooner, who hath the better fortune. That seemeth very military (as in manner all our policy of England is) and to have as smal to do with Lawyers, as with Physicians, quickly to dispatch, and for the rest, to returne, each man to his busines to serve the Common-wealth in his vocation. The Popes of Rome, and men of the Church, who of long time have had dominion in our consciences, and would bring things to a more moderation, have much detested this

kinde

kinde of triall and judgement, as reaſon is every man miſliketh that which is not like to his education; and cold reaſoning by Theology & Philoſophy: they (I ſay) much miſlike many things done neceſſarily in hot policy.

At the leaſt a Common-wealth military muſt adventure many things to keepe it in quiet, which cannot ſeeme ſo preciſely good to them which diſpute thereof in the ſhadow and in their ſtudies. Howſoever it be, this kind of tryall a long time hath been uſed. So that at this time we may rather ſeeke the experiences of it out of our Hiſtories of time paſſed, then of any view or ſight thereof, of them which are now alive. Nevertheleſſe the Law remaineth ſtill, and is not aboliſhed; and if it ſhall chance the murtherer or man-ſlayer (the one wee call him that lying in waite, & as they terme it in French, *de guit appendant*, killeth a man; the other by caſuall falling out and ſudden debate and

choler

choler doth the ſame which way ſoever it bee done) if hee that hath ſlaine the man hath his pardon of the Prince, as occaſion or the favour of the Prince may ſo preſent that he may have it, yet the partie grieved hath theſe two remedies, I ſay, to require juſtice by grand aſſize, or battle upon his appeale and private revenge, which is not denied him. And if the defendant either by great aſſize, or battell bee convinced upon that appeale, he ſhall die, notwithſtanding the Princes pardon. So much favourable our Prince, and the law of our Realme is to juſtice, and to the puniſhment of bloud violently ſhed.

CHAP. IV.

Of the Court of Starre-chamber.

THere is yet in England another Court, to the which, that I can underſtād, there is not the like in any other

other Country. In the Terme time (the Terme time as I have heretofore ſhewed, I call the time, & thoſe daies when law is exerciſed in Weſtminſter Hall, which, as I have ſayd, is but at certain times and Termes) every weeke once at the leaſt (which is commonly on Fridayes, and Wedneſdaies, and the next day after that the Terme doth end) the Lord Chancellour, and the Lords, and other of the Privie Councell, ſo many as will, and other Lords and Barons which be not of the Privie Councell, and be in the Towne, & the Judges of England, ſpecially the two chiefe Judges, from nine of the clock till it be eleven, doe ſit in a place which is called the Starre-chamber, either becauſe it is full of windowes, or becauſe at the firſt all the roofe thereof was decked with Images or ſtarres gilded. There are plaints heard of riots. Riot is called in our Engliſh terme or ſpeech, where any number is aſſembled with force to doe any thing: and it had the beginning, becauſe

eauſe that our men being much accuſtomed either in forraign wars in France, Scotland or Ireland, or being overmuch exerciſed with civil wars within the Realme (which is the fault that falleth ordinarily among bellicous Nations) whereby men of warre, Captaines and Souldiers become plentifull: which when they have no extreme ſervice wherewith to occupie their buiſie heads and hands, accuſtomed to fight and quarrell, muſt needs ſeeke quarrells and contentions amongſt themſelves, & become ſo ready to oppreſſe right among their neighbours, as they were wont before, with praiſe of manhood, to bee in reſiſting injury offered by their enemies. So that our Nation uſed hereunto, and upon that more inſolent at home, and not eaſie to bee governed by law and politike order, men of power beginning many fraies, and the ſtronger by factions and parties offering too much injurie to the weaker, were occaſions of making good lawes. First of Retainers,

ners, that no man ſhould have above a number in his Livery or retinue; then of the enquiry of routs & riots at every Seſſions, and of the law whereby it is provided that if any by force or by riot enter upon any poſſeſſions, the Juſtices of the Peace ſhall aſſemble themſelves & remove the force, and within certaine time enquire thereof.

And further, becauſe ſuch things are not commonly done by the meane men, but ſuch as be of power and force, & be not to be dealt with-all with every man, nor of meane Gentlemen: if the riot be found and certified to the Kings Councell, or if otherwiſe it be complained of, the party is ſent for, and he muſt appeare in the Star-chamber: ſeeing (except the preſence of the King only) as it were the Majeſtie of the whole Realme before him, being never ſo ſtout, he will be abaſhed: and being called to anſwer (as he muſt come of what degree ſoever he be) he ſhall be ſo charged with ſuch gravitie,

with

with ſuch reaſon, and remonſtrance, and of thoſe chiefe perſonages of England, one after another handling him on that ſort, that what courage ſoever he hath, his heart will fall to the ground, and ſo much the more, when, if he make not his anſwer the better, as ſeldome he can in ſo open violence, he ſhall be commanded to the Fleet, where he ſhall be kept in priſon in ſuch ſort as theſe Judges ſhall appoint him, and lie there till he bee weary, aſwell of the reſtraint of his liberty, as of the great expences, which he muſt there ſuſtaine, and for a time be forgotten, whiles after long ſuit of his friends, he will be glad to be ordered by reaſon. Sometime as his deſerts bee, he payeth a great fine to the Prince, beſides great coſts and dammages to the party, & yet the matter wherefore he attempted this riot & violence, is remitted to the common law. For that is the effect of the Court, to bridle ſuch ſtout Noblemen, or Gentlemen which would offer wrong by force

to

to any manner of men, and cannot be content to demand or defend their right by order of the law. This Court began long before, but tooke augmentation and authority at that time that Cardinall *Wolsey*, Archbishop of Yorke, was Chancellour of England, who of some was thought to have first devised that Court, because that he, after some intermission by negligence of time, augmented the authoritie of it, which was at that time marvellous necessary to doe, to represse the insolency of the Noblemen and Gentlemen of the North parts of England, who being farre from the King and the seat of justice, made almost as it were an ordinary warre among themselves, and made their force their law, banding themselves with their Tenants, and servants, to do or revenge injury one against another as the listed. This thing seemed not supportable to the Noble Prince *Henry* the eight: and sending for them one after another to his Court, to answer before the

the persons before named, after they had had remonstrance shewed them of their evill demeanour, & bin well disciplined, as well by words as by fleeting a while, and thereby their purse and courage somewhat asswaged, they began to range themselves in order, and to understand that they had a Prince who would rule his subjects by his law and obedience. Sith that time this Court hath been in more estimation, and is continued to this day in manner as I have said before.

The Judges of this Court are the Lord Chancellor, the Lord Treasurer, all the Kings Majesties Councel, the Barons of this Land.

The Officers therein are a Clark, three Atturnies, an Examiner.

The Clarke keepeth the records, rules, entries, orders, and decrees, made in this Court.

The three Atturnies are for the plaintiffe, and for the defendant to frame their complaints, and answeres, and make the matter

ter apt to be heard for the Lords.

The Examiner taketh the depositions of the witnesses of both sides, to the proofe or disproofe of the cause.

The order of proceeding to judgement is by assent of voices, and open yeelding their mind in Court, the major part being preferred for sentence.

The punishment most usuall, is imprisonment, pillory, a fine, & many times both fine and imprisonment.

The processe is a *Sub pœna*, an attachment, a proclamation of rebellion, and a commission of rebellion.

This *Sub pœna* is in manner of a libell or precept.

The Proclamation and commission of rebellion serveth when the party is stubborne, having made contempt, and commeth not in by the former processe.

The Messengers of this Court are the Warden of the Fleet: or the Sergeants at Armes.

The matters belonging most commonly, are by-statutes, as is taking away

way of maids within age against parents or guardians will. See *Anno 4. & 5. Phil. & Maria cap.* 8. All notable forgeries, counterfeiting letters or privie tokens. See *Hen. Anno 33. cap.* 1. *An.* 5. *Eliz. cap.* 11. slandering of Nobles, and seditious newes See *R.* 2. *Anno* 2. *cap.* 5. *Anno* 1. *&* 2. *Phil. & Maria. cap.* 2. *Anno* 2. 3. *Eliz. cap.* 7. All notable riots and unlawfull Assemblies. See *Anno* 1. *Eliz. cap.* 17. And all the titles of Riots in *Rastals* Abridgement, all notable deceits, and all kinde of consenage, &c.

Chap. V.

Of the Court of Wards and Liveries.

He whom wee call a Ward in England, is called in Latine *pupillus*, and in Greeke ὀρφανος. The Guardian is called in Latine *tutor*, in Greek ἐπιτροπὸς. A Ward or infant is taken for a child in base age, whose

whose Father is dead. The Romans made two distinctions, *pupillum, & minorem*; the one fourteene yeere old, the other was accounted from thence to five and twenty: And as *pupillus* had *tutorem*, so *minor* had *curatorem*, till he came to the age of five and twenty. These Tutors or Cutators were accountable for the revenues of the Pupils, and Minors Lands; and great provision, and many Lawes and orders be made for them in the Bookes of the Civill Law, for rendring just and true accounts. So that to be a Guardian or Tutor was accounted among them to bee a charge or trouble, a thing subject to much incumbrance and small profit, so that divers meanes were sought for, to excuse men from it. With us this is cleane contrary, for it is reckoned a profit to have a Ward. For the Lord of whom the Ward doth hold the land, so soone as by the death of the Father the child falleth Ward unto him, he seizeth upon the body of the Ward,

Ward, and his lands, of which (ſo that he doth nouriſh the Ward) he taketh the profits without accounts. And beſide that, offring to his Ward convenable marriage without diſparagement before the age of one and twenty yeeres if it be a man, of fourteene if it be a woman. If the Ward refuſe to take that marriage, he or ſhe muſt pay the value of the marriage, which is commonly rated according to the profit of his Lands. All this while I ſpeake of that which is called in French *garde noble*, that is, of ſuch as hold lands of others by Knights ſervice, for that is another kind of ſervice, which we call in French *gard returier*, we call it *gard in ſocage*, that is, of ſuch as do not hold by Knights ſervice, but by tenure of the Plough. This Wardſhip falleth to him who is next of the kin, and cannot inherit the Land of the Ward, as the Uncle by the Mothers ſide, if the Land do deſcend by the Father, & of the Fathers ſide, if the Land doe deſcend by the Mother,

ther. This Guardian is accountable for the revenues and profits of the Land, as the Tutor by the Civill Law, to the Ward or Pupill so soone as he is full age.

The man is not out of Wardship by our Law till one and twenty yeer old, from thence he is reckoned of full age, as well as in the Romane Lawes at five and twenty.

The woman at fourteene is out of Ward: for she may have a Husband able to doe the Knights service, say our Books. And because our Wives be in the power (as I shal tel you hereafter) of their husbands, it is no reaso she should be in two divers guards.

Many men do esteeme this Wardship by Knights service very unreasonable and unjust, and contrary to nature, that a Free-man and Gentleman should be bought and sold like an Horse or an Oxe, and so change Guardians as Masters and Lords: at whose government not only his body but his Lands and his houses should be, to bee wasted and spent with-

without accounts, and then to marry at the will of him, who is his naturall Lord, or his will who hath brought him to such as he likes not peradventure, or else to pay so great a ransome. This is the occasion, they say, why many Gentlemen be so evill brought up touching vertue and learning, and but onely in daintinesse and in pleasure: and why they be married very young, and before they be wise, & many times doe not greatly love their Wives. For when the Father is dead, who hath the naturall care of his child, not the Mother, nor the Uncle, nor the next of kinne, who by all reason would have most naturall care for the bringing up of the infant & *Minor*, but the Lord of whom hee holdeth his land in the Knights Service, be it the King or Queene, Duke, Marquesse, or any other, hath the government of his body, and marriage, or else who that bought him at the first, second, or third hand. The Prince as having so many, must needs

needs give or ſell his Wards away to other, and ſo he doth. Other do but ſeeke which way they may make moſt advantage of him, as of an Oxe or other Beaſt. Theſe all (ſay they) have no naturall care of the infant, but of their owne gaine, and eſpecially the buyer will not ſuffer his Ward to take any great paines, either in ſtudy or any other hardneſſe, leſt he ſhould be ſick and die, before hee hath married his Daughter, Siſter, or Couſin, for whoſe ſake he bought him, and then all his money which he paid for him ſhould be loſt. So he who had a Father which kept a good houſe, and had all things in good order to maintaine it, ſhall come to his owne, after he is out of Wardſhip, Woods decayed, Houſes falne downe, ſtocke waſted & gone, Lands lent forth, and plowed to the barren, and to make amends, ſhall pay yet one yeeres rent, for reliefe, and ſue *ouſter le maine*, beſide other charges, ſo that not of many yeeres, and peradventure never he ſhall bee

able to recover, and come to the estate where his Father left it. This, as it is thought, was first granted upon a great extremity of King *Henry* the third for a time upon the warre which he had with the Barons, and afterward increased, and multiplied to more and more persons and grievances, and will be the decay of the Nobility and liberty of England. Other againe say, the Ward hath no wrong, for either his Father purchased the Land, or it did not descend unto him from his Ancestours with his charge. And because he holdeth by Knights Service, which is in armes and defence, seeing that by age he cannot doe that whereto he is bound by the Land, it is reason hee answer that profit to the Lord whereby he may have as able a man to do the service. The first Knights in Rome, those that were chosen *Equites Romani*, had *equum publicũ*, on which they served; and that was at the charge of the Widowes and Wards, as appeareth by *Titus Livius*,

vius, becauſe that thoſe perſons could not doe bodily ſervice to the Common-wealth. Wherefore this is no new thing, but reaſonable in that moſt wiſe Common-wealth, and to the prudent King *Servius Tullius*. As for the education of our Common-wealth, it was at firſt *Militarie*; and, almoſt in all things, the ſcope and deſigne thereof is *Militie*: Yet it was thought moſt like, that Noblemen, good Knights, and great Captaines, would bring up their Wards in their own feares and vertues, and then marry them into like race and ſtocke, where they may find and make friends. Who can better looke to the education, or hath better skill of the bringing up of a Gentleman, then hee who for his higher Nobility hath ſuch a one to hold of him by Knights ſervice; or would do it better then hee that looketh or may claime ſuch ſervice of his Ward, when age and yeeres will make him able to doe. That which is ſaid that this manner of

Wardſhip, began in the time of King *Henrie* the third, cannot ſeeme true. For in Normandy and other places of France the ſame order is.

And that Statute made in King *Henry* the Thirds time touching Wards, to him that will weigh it well, may ſeeme rather a qualification of that matter, and an argument that the faſhion of Wardſhip was long before: but of this matter another time ſhall be more convenient to diſpute. This may ſuffice to declare the manner of it.

The Judge in this Court is the Maſter of the Wards.

Officers are the Atturnie of the Wards for the King.

The Surveyor, the Auditor, the Treaſurer, the Clarke; two common Atturnies, inferiour Officers, alſo Meſſengers, and Purſuivants.

The Atturny for the Wards is alwayes for the Kings right, and aſſiſtant with the Maſter of the Wards.

The Surveyor is he that hath the allowing of every Livery that iſſued out.

The

The Auditor taketh the account, and cauſeth Proceſſe to be made.

The Treaſurer receiveth the money due to his Majeſty.

The Clarke is writer of the Records, and writer of the Decrees, Proceſſes, and Orders of the Court.

The matters of this Court are all benefits that may come unto his Majeſty, by Guard, by Marriage, Prievueer, Seaſin, and Reliefe.

The generall Proceſſe in this Court is a Commiſſion, a Proceſſe in manner of a Proclamation, warning the partie or parties to appeare before the Maſter of the Wards. More ſpeciall proceſſe belonging to this Court, are a *Diem clauſit extremum*, a *Devenerunt*, a *melius inquirendum*, a *Datum eſt nobis intelligi*, a *Quæ Plura*. Of the nature of theſe ſee *Stamfords* Bookes of the Kings Prerogative.

Out of this Court are the Liveries ſued, and committed to the Clarks of the Petty Bagge, Officers in the Chancery.

When the heire hath prooved his age, and ſued his Livery, then hee muſt do homage to him that is the Deputy of the Prince for that purpoſe, and then muſt pay a fine or fee to the Lord Privie Seale.

CHAP. VI.

Of the Dutchie Court.

THe Dutchie Court of Lancaſter is alſo the Kings Court of Record. In it are holden all Pleas reall and perſonall, which concerne any of the Dutchie lands, now in his Majeſties hands and parcell of the Crowne: but ſerved in Court and juriſdiction.

The Judge in this Court is the Chancellor, aſſiſted by the Atturney of the Dutchie for the King, the Clarke of the Court, divers Surveyors, two common Atturnies, divers Auditors, two Aſſiſtants, the Sergeant of his Majeſtie.

The

The Chancellour is a Judge of the Court, to see Justice administred between his Majestie and his subjects, and between party and party.

The Atturney is to maintaine the King, & is assistant to the Chancellor, & sheweth him what the Law is.

The Clark keepeth the Rolles, and Records, and maketh the Processe.

The Surveyors are divers: one more principall: they survey the Kings land within the Dutchie.

The Auditors are divers: one more principall: they are to account and make the Order of the receits within the Dutchie.

The common Atturnies are for the Suitors that have cause in action within the Court.

The Assistants are two Judges at the Common law that are to ayde them in difficult points of law.

The Sergeant for the King, is a learned Counsellour, appointed to be of his Majesties Councell for his right.

There is also belonging to this

Court a Vice-chancellour, that ſerveth for the County Palatine of Lancaſter, hee maketh all originall Proceſſes within his liberty, as doth the Lord Chancellour of England for the Chancery.

The Proceſſe of the County Palatine, is a *Subpœna*, as in the Chancerie.

CHAP. VII.

The Court of Requeſts.

THis Court is the Court wherin all ſuits made to his Majeſtie by way of ſupplication or petition are heard and ended; neither ſhould it hold plea of any matters then ſuch. And this is called the poore mans Court, becauſe there he ſhould have right without paying any money: and it is called alſo the Court of conſcience.

The Judges in this Court are the Maſters of Requeſts; one for the Com-

Common Lawes, the other for the Civill Lawes.

The Officers in this Court, are the Regiſter, the Examiner, three Atturnies, one Meſſenger or Purſuivant.

The Examiner is hee that oppoſeth the witneſſes by oath, and recordeth their depoſitions.

The Atturnies ſerve for the Plaintiffe and Defendant to frame their complaints and anſwers.

The Purſuivant is an Officer in this Court, to bring any man before the Judges whom they ſhall name.

The matters in this Court at this day, are almoſt all ſuits that by colour of equity or ſupplication made to the Prince, may be brought before them: properly all poore mens ſuits, which are made to his Majeſty by ſupplication.

The Proceſſes in this Court, are a privie Seale, Proclamation of rebellion.

The nature of theſe Proceſſes is, as was ſaid before in the Court of Star-chamber.

Chap. VIII.

Of Wives and Mariages.

THe Wives in England be, as I ſaid, *in poteſtate maritorum*, not that the Husband hath *vitæ ac necis poteſtatem*, as the Romans had in the old time, of their children; for that is onely in the power of the Prince, and his Lawes, as I have ſaid before: but that whatſoever they have before marriage, as ſoone as marriage is ſolemnized is their husbands, I meane of Mony, Plate, Jewels, Cattell, and generally all moveables. For as for land and heritage, it followeth the ſucceſſion, and is ordered by the Law, as I ſhall ſay hereafter, and whatſoever they get after marriage, they get to their husbands. They neither can give nor ſell any thing either of their Husbands or their owne. There is no moveable thing by the Law of England *conſtanti matrimonio*, but as *peculium ſervi aut familiæ*, and yet in move-

moveables at the death of her Husband she can claime nothing, but according as hee shall will by his Testament, no more then his sonne can: all the rest is in the disposition of the Executors, if hee die testate. Yet in London and other great Cities they have that Law & Custome, that when a man dieth, his goods be divided into three parts. One third part is imployed upon the buriall & the bequests, which the testator maketh in his testament: Another third part the wife hath as her right; and the third part is the due and right of his children, equally to be divided among them. So that a man there can make testament but of one third of his goods. If he die intestate, the Funerals deducted, the goods be equally divided betweene the Wife and children.

By the common Law of England if a man die intestate, the Ordinary (which is the Bishop by common intendment) sometime the Archdeacon, Deane, or Prebendary, by priviledge

ledge and preſcription, doth commit the adminiſtration of the goods to the Widow or the child, or next kinſman of the dead appointing out portions to ſuch as naturally it belongeth unto, and the Ordinarie by common underſtanding, hath ſuch gravity and diſcretion as ſhall be fit for ſo abſolute an authority; for the moſt part following ſuch diviſion as is uſed in London, either by thirds or halfes. Our fore-fathers newly converted to the Chriſtian faith, had ſuch confidence in their Paſtors and Inſtructors, and tooke them to bee men of ſuch conſcience, that they committed that matter to their diſcretion: and belike at the firſt were ſuch as would ſeeke no private profit to themſelves thereby: that being once ordained hath ſtill ſo continued. The abuſe which hath followed was in part redreſſed by certain Acts of Parliament made in the time of King *Henry* the eight, touching the probate of teſtaments, committing of adminiſtration, and mortuaries.

But

But to turne to the matter which we now have in hand, the Wife is so much in the power of her Husband, that not onely her goods by marriage are straight made her Husbands, and she loseth all her administration which shee had of them: but also where all Englishmen have name and surname, as the Romans had, as *Marcus Tullius, Caius Pompeius, Caius Julius*, whereof the name is given to us at the Font, the surname is the name of the Gentilty & stock which the son doth take of the Father alwaies, as the old Romans did, our Daughters so soone as they bee married, lose the surname of their Father, and of the family and stocke whereof they do come, and take the surname of their Husbands, as transplanted from their Family into another. So that if any Wife was called before *Philip Wilford* by her owne name and her Fathers surname, so soone as she is married to me, she is no more called *Philip Wilford*, but *Philip Smith*, and so must she write and

and ſigne and as ſhe changeth husbands, ſo ſhe changeth ſirnames, called alwaies by the ſirname of her laſt husband. Yet if a woman once marrie a Lord or a Knight, by which occaſion ſhe is called, my Lady, with the ſirname of her husband, if hee dye, and ſhee take a husband of a meaner eſtate, by whom ſhee ſhould not bee called Lady (ſuch is the honour wee doe give to Women) ſhee ſhall ſtill bee called Lady with the ſirname of her firſt husband, and not of the ſecond.

I thinke amongſt the old Romans thoſe marriages which were made *per coemptionem in manum*, and *per æs* and *libram*, made the wife *in manu & poteſtate viri*; whereof alſo we had in our old law and ceremony of marriage, a certaine memory as a view and *veſtiginm*: For the woman at the Church doore was given of the Father, or ſome other man of the next of kinne, into the hands of the husband, and he layd downe gold and ſilver for her upon the

Booke,

Booke, as though he did buy her; the Prieſt was belike in ſtead of *Lipripeus*: Our marriages bee eſteemed perfect by the Law of England, when they bee ſolemnized in the Church or Chappell, in the preſence of the Prieſt and other witneſſes. And this only maketh both the husband and the wife capable of all benefits which our Law doth give unto them and their lawfull children: Inſomuch that if I marrie the widow of one lately dead, and at the time of her Husbands death was with child, if the child be borne after marriage ſolemnized with me, this child ſhall be my heire, and is accounted my lawfull ſonne, not his whoſe child it is indeed: ſo preciſely we take the letter where it is ſaid, *pater eſt quem nuptiæ demonſtrant*. Thoſe wayes & means which *Juſtinian* doth declare to make Baſtards to be lawfull children, *muliers*, or rather *mulieurs* (for ſuch a terme our law uſeth for them which bee lawfull children) be of no effect in England: neither the Pope,

nor

nor Emperour, nor the Prince himselfe never could there legitimate a bastard to enjoy any benefit of our Law: the Parliament hath only that power.

Although the Wife bee (as I have written before) *in manu & potestate mariti*, by our Law, yet they be not kept so straight as in a mew, and with a guard, as they be in Italy and Spaine, but have almost as much liberty as in France, and they have for the most part all the charge of the house and houshold (as it may appeare by *Aristotle* and *Plato*, the Wives of the Greekes had in their time) which is indeed the naturall occupation, exercise, office, and part of a Wife. The Husband to meddle with the defence either by law or force, and with all forreign matters, which is the naturall part and office of the man, as I have written before. And although our Law may seeme somewhat rigorus toward the Wives: yet for the most part they can handle their Husbands so well and

so

ſo dulcely, and ſpecially when their Husbands be ſicke, that where the law giveth them nothing, their Husbands at their death, of their goods will give them all. And few there be that bee not made at the death of their Husbands either ſole or chiefe executrices of his laſt Will and Teſtament, and have, for the moſt part, the government of the children and their portions: except it be in London, where a peculiar order is taken by the City, much after the faſhion of the civill Law.

All this while I have ſpoken only of moveable goods. If the Wife be an inheritrix, and bring land with her to the marriage, that land deſcendeth to her eldeſt ſonne, or is divided among her daughters. Alſo the manner is, that the land which the wife bringeth to the marriage, or purchaſe afterwards, the husband cannot ſell nor alienate the ſame, no not with her conſent, nor ſhe her ſelfe during the marriage, except that ſhee bee ſole examined by the Judge

It is avoidable after the husbands death, except it be for one and twentie yeeres, or three lives according to the ſtatute, except they levie a fine.

Judge at the common law: and if hee have no child by her and she die, the land goeth to her next heires at the common law: but if in the marriage he have a child by her, which is heard once to cry, whether the child live or dye, the Husband shall have the usufruit of her lands (that is the profit of them) during his life; & that is called the curtesie of Englād.

Likewise if the Husband have any Land either by inheritance descended, or purchased and bought, if hee die before the Wife, she shall have usufruit of the one third part of his lands. That is, she shall hold the one third part of lands during her life as her dowry, whether hee hath child by her or no. If hee hath any children, the rest descendeth straight to the eldest: if he hath none, to the next heire at the common law; and if she mislike the division, she shall aske to bee endowed of the faireſt of his lands to the third part.

This which I have written touching

ing marriage, and the right in moveables and unmoveables which commeth thereby, is to be understood by the common law, when no private contract is more particularly made. If there be any private pacts, covenants, and contracts made before the marriage betwixt the Husband and the Wife, by themselves, by their Parents, or other friends, those have force to bee kept according to the firmitie and strength in which they are made: And this is enough of Wives and marriage.

CHAP. IX.

Of Children.

OUr children be not *in potestate parentum*, as the children of the Romans were: but as soone as they be *puberes*, which we call the age of discretion, before that time nature doth tell they bee but as it were *partes parentum*) that which is

is theirs they may give or sell, and purchase to themselves either lands and other moveables, the Father having nothing to do therewith. And therefore *mancipatio* is cleane superfluous, we know not what it is. Likewise, *sui haredis* complaints *de inofficioso testamento* or *preteritorum liberorum non emancipatorum*, have no effect nor use in law, nor we have no manner to make lawfull children but by marriage, and therefore wee know not what is *adoptio*, nor *arrogatio*. The Testator disposeth in his last Will his moveable goods freely as hee thinketh meet and convenient without controlement of wife or children. And our testimonies for goods moveable be not subject to the ceremonies of the civill law, but made with all liberty and freedome, and *jure militari*. Of lands as yee have understood before, there is difference: For when the owner dieth, his land descendeth only to his eldest sonne, all the rest both sonnes and daughters have nothing by the com-

common law, but muſt ſerve their eldeſt brother if they will, or make what other ſhift they can to live: except that the Father in his life time do make conveyance, and eſtate of part of his land to their uſe, or elſe by device, which words amongſt our Lawyers doe betoken a Teſtament written, ſealed and delivered in the time of the Teſtament before witneſſe; for without thoſe ceremonies a bequeſt of lands is not availeable. But by the common law, if he that dieth had no ſonnes but daughters, the land is equally divided amongſt them, which by portion is made by agreement, or by lot. Although (as I have ſaid) ordinarily and by the common Law, the eldeſt ſon inheriteth all the lands, yet in ſome Countreys they have equall portion; and that is called gavel-kind, and is in many places in Kent. In ſome places the youngeſt is ſole heire, & in ſome places after another faſhion. But theſe being but particular cuſtomes of certain places, and out of the rule

of

of common law, do little appertaine to the disputation of the policy of the whole Realme, and may be infinite. The Common-wealth is judged by that which is most ordinarily and commonly done through the whole Realme.

Chap. X.

Of Bondage and Bondmen.

After that we have spoken of all the sorts of Freemen according to the diversitie of their estates and persons, it resteth to say somewhat of Bondmen which were called *servi*, which kind of people and the disposition of them and about them doth occupy the most of *Justinians* Digestes, and Code. The Romanes had two kinds of Bondmen, the one which were called *servi*, and they were either which were bought for money, taken in warre, left by succession, or purchased by some other kind of lawfull acquisition; or else borne

borne of their bondwomen, and called *verne*: all those kind of Bondmen be called in our law villaines in grosse, as you would say, immediatly bond to the person and his heires. Another they had (as appeareth in *Justinians* time) which they call *adscriptitii glebæ*, or *agri censiti*. These were not bond to the person, but to the Mannor or place, and did follow him who had the Mannors; and in our Law are called *villaines regardants*, for because they be as members, or belonging to the Mannor or place. Neither of the one sort or of the other have we any number in England. And of the first I never knew any in the Realm in my time: Of the second, so few there be, that it is not almost worth the speaking; but our Law doth acknowledge them in both those sorts.

Manumission of that kind of Villaines or bondmen in England, is used and done after divers sorts, and by other, and more light and easie meanes then is prescribed in the civil

vill Law: and being once manumitted, he is not *libertus manumittentis*, but simply *liber*: howbeit since our Realme hath received the Christian Religion, which maketh us all in Christ brethren, and in respect of God and Christ, *conservos*, men began to have conscience to hold in captivity, & such extreme bondage, him whom they must acknowledge to be their brother, and as we use to terme him a Christian, that is, who looketh in Christ, and by Christ, to have equall portion with them in the Gospel and salvation.

Upon this scruple, in continuance of time, and by long succession, the holy Fathers, Monks and Friers, in their confession, & specially in their extreme and deadly sicknesses, burdened the consciencs of them whom they had under their hands: so that temporall men by little and little, by reason of that terrour in their conscience, were glad to manumitte all their villains: but the said holy Fathers, with the Abbots and Priors,

did

did not in like ſort by theirs; for they had alſo conſcience to impoveriſh & diſpoyle the Church ſo much as to manumit ſuch as were bond to their Churches, or to the Mannors which the Church had gotten, and ſo kept theirs ſtill. The ſame did the Biſhops alſo, till at the laſt, and now of late, ſome Biſhops (to make a piece of money) manumitted theirs, partly for argent, partly for ſlanders, that they ſeemed more cruell then the temporality: after the Monaſteries cõming into temporall mens hands, have been occaſion that now they be almoſt all manumitted. The moſt part of Bondmen when they were, yet were not uſed with us ſo cruelly, nor in that ſort as the bondmen at the Romans civill law, as appeareth by their comedies: nor as in Greece, as appeareth by theirs: but they were ſuffered to enjoy copy-hold land, to gaine and get as other ſervants, that now and then their Lords might fleece them, and take a piece of money of them, as in

France the Lords doe taile them whom they call their Subjects, at their pleasure, and cause them to pay summes of mony, as they list to put upon them. I thinke both in France and England, the change of Religion to a more gentle, humane, and more equall sort, (as the Christian Religion, is in respect of the Gentiles) caused this old kind of servile servitude and slaverie, to be brought into that moderation, for necessity, first to villaines regardants, and after to servitude of lands and tenures, and by little and little finding out more civill and gentle meanes, and more equall to have that done which in time of heatheniſme, servitude or bondage did, they almost extinguished the whole. For although all persons Christians be brethren by Baptisme in Jesus Christ, and therefore may appeare equally free, yet some were, and still might be Christened being bond and serve, and whom as the Baptisme did find, so it did leave them, for it changeth not

civil

civill lawes nor compacts amongst men which be not contrary to Gods lawes: but rather maintaineth them by obedience.

Which seeing men of good conscience having that scruple whereof I wrote before, have by little and little, found meanes to have and obtaine the profit of servitude and bondage which Gentility did use, and is used to this day among Christians on the one part, and Turks and gentiles on the other part, when warre is betwixt them, upon those whom they take in battell. Turkes and Gentiles I call them, which using not our Law, the one beleeveth in one God, the other in many Gods, of whom they make Images. For the law of Jewes is well enough knowne, and, at this day so farre as I can learn amongst all people, Jewes bee holden as it were in a common servitude, and have no rule nor dominion as their owne prophecies do tell, that they should not have after that Christ promised to them, was

of them refuſed: for when they would not acknowledge him, obſtinately forſaking their helpe in ſoule for the life to come, and honour in this world for the time preſent, not taking the good tidings, newes, and Evangell brought to them by the great grace of God, and by the promiſe of the Prophets fructified in us which be Gentiles, and brought forth this humanity, gentleneſſe honour, and godly knowledge which is ſeene at this preſent. But to returne to the purpoſe.

This perſwaſion I ſay of Chriſtians, not to make nor keepe his brother in Chriſt, ſervile, bond, and underling for ever unto him, as a beaſt rather then a man, and the humanity which the Chriſtian Religion doth teach, hath engendred through Realmes (not neere to Turkes and Barbarians) a doubt, a conſcience, a ſcruple to have ſervants and Bondmen; yet neceſſitie on both ſides, of the one to have help, on the other to have ſervice, hath kept a figure or faſhion

ſhion thereof. So that ſome would not have Bondmen, but *adſcriptitii glebæ*, and villaines regardant to the ground, to the intent their ſervice might be furniſhed, that the Country being evill, unwholſome, and otherwiſe barren, ſhould not be deſolate. Others, afterwards found out the wayes and meanes, that not the men, but the Land ſhould bee bond, and bring with it ſuch bondage and ſervice to him that occupieth it, as to carry the Lords dung unto the fields, to plow his ground at certaine dayes, ſow, reape, come to his Court, ſweare faith unto him, and in the end to hold the land but by copie of the Lords Court-roll, and at the will of the Lord.

The tenure is called alſo in our law, villaine, bond, or ſervile tenure: yet to conſider more deeply, all Land, even that which is called moſt free land, hath a bondage annexed unto it, not as naturally the lower ground muſt ſuffer and receive the water and filth which falleth from

the highest ground, nor such as *Justinian* speaketh of *de servitudinibus prædiorum rusticorum & urbanorum*, but the land doth bring a certaine kinde of servitude to the possessor. For no man holdeth Land simply free in England, but he or she that holdeth the Crown of England: all others hold their land in fee, that is, upon a faith or trust, and some service to be done to another Lord of a Mannor, as superiour, and he againe of an higher Lord, till it come to the Prince, and him that holdeth the Crowne.

So that if a man die, and it be found that hee hath land which hee holdeth, but of whom no man can tell, this is understood to be holden of the Crowne, and *in capite*, which is much like to the Knights service, and draweth unto it three services; *Homage*, *Ward*, and *Marriage*: that is, hee shall sweare to bee his man, and to be true unto him of whom he holdeth the land: His son who holdeth the land after his death

of

of his Father, ſhall be married where it pleaſeth the Lord.

Hee that holdeth his land moſt freely of a temporall man (for frank almes and frank marriage hath another cauſe and nature) holdeth by fealty only, which is, he ſhall ſweare to bee true to the Lord, and to ſuch ſervice as appertaineth to the land which he holdeth of the Lord.

So that all free land in England is holden in fee, or *feodo*, which is as much to ſay, as *in fide*, or *fiducia*, that is, in truſt and confidence, that hee ſhall be true to the Lord of whom he holdeth it, pay ſuch rents, doe ſuch ſervice, and obſerve ſuch conditions as were annexed to the firſt donation. Thus all ſaving the Prince bee not *viri domini*, but rather *fiduciarii domini*, and *poſſeſſores*.

This is a more likely interpretation then that which *Littleton* doth put in his booke, who ſaith that *feodum idem eſt quod hareditas*, which it doth betoken in no language. This hapneth many times to them who

be of great wit and learning, yet not ſeene in many tongues, nor marke not the deduction of words which time doth alter. *Fides* in Latine (the *Gothes* comming into *Italy*, and corrupting the language) was turned firſt into *fede*, and at this day in *Italy* they will ſay *in fide*, *en fide*, or *ala fe*. And ſome uncunning Lawyers that would make a new barbarous Latine word, to betoken land given in *fidem*, or as the Italian ſaith, *in fide*, or *fe*, made it *feudum*, or *feodum*. The nature of the word appeareth more evident in thoſe which wee call to *feff*, *feoff*, or *feoffes*; the one be, *fiduciarii poſſeſſores*, or *fidei commiſſarii*: the other is, *dare in fiduciam*, or *fidei commiſſum*, or more latinely, *fidei committere*.

The ſame *Littleton* was as much deceived in *Withernam*, and divers others old words. This *Withernam*, as he interpreteth *vetitum namium*, in what language I know not; whereas in truth it is in plaine Dutch, and in our old Saxon language, *Wither nempt*,

nempt, alterum accipere, or *vicissim rapere*, a word that betokeneth that which in barbarous latin is called *represalia*, when one taking of me a distres, which in latin is called *pignus*, or any other thing, and carrying it away out of the jurisdiction wherein I dwel, I take by order of him that hath jurisdiction, another of him againe, or of some other in that jurisdiction, and do bring it into the jurisdiction, wherein I dwel, that by equall wrong I may come to have equall right. The manner of *represalia*, & that we call *Withernã*, is not altogether one: but the nature of them both is as I have described, and the proper signification of the words doe not much differ.

But to returne thither where wee did digresse: yee see that where the persons be free, and the bodies at full libertie, and *maxime ingenui*, yet by annexing a condition to the Land, there is meanes to bring the owners and possessors therof into a certaine servitude, or rather libertinity: That the tenants beside paying the rent

accuſtomed, ſhall owe to the Lord a certaine faith, duty, truſt, obedience, and (as we terme it) certain ſervice, as *libertus*, or *cliens patrono:* which becauſe it doth not conſiſt in the perſons (for the reſpect in them doth not make them bond, but the land and occupation thereof) is more properly expreſſed in calling the one Tenant, the other Lord of the fee, then either *libertus* or *cliens* can doe the one, or *patronus* the other: for theſe words touch rather the perſons, and the office and duty between them, then the poſſeſſions: but in our caſe leaving the poſſeſſion and land, all the obligation of ſervitude and ſervice is gone.

Another kind of ſervitude or bondage is uſed in England for the neceſſity thereof, which is called apprenticehood. But this is onely by covenant & for a time; & during the time, it is *vera ſervitus*. For whatſoever the Apprentice getteth of his own labour, or of his maſters occupation or ſtock, hee getteth to him whoſe

whose Apprentice he is, he must not lye forth of his masters doores, hee most not occupy an stocke of his owne, nor marry without his masters licence, and hee must doe all servile offices about the house, and bee obedient to all his masters commandements, and shall suffer such correction as his Master shall thinke meet, and is at his masters cloathing, and nourishing, his Master being bound onely to this which I have said, and to teach him his occupation: and for that hee serveth, some for seven or eight yeeres, some nine or tenne yeeres, as the masters and the friends of the young man shall thinke meet, or can agree; he is altogether (as *Polidore* hath noted) *quasi pro emptitio servo*. Nevertheless, that neither was the cause of the name Apprentice, neither yet doth the word betoken that which *Polidore* supposeth, but is a French word, and betokeneth a learner or a scholler.

Apprendre in French is to learne,

learne, and *Apprentice* in French (of which tongue wee borrowed this word, and many other) as *Diſcipulus* in Latine: Likewiſe he to whom he is bound, is not called the Lord, but his maſter, as ye would ſay his teacher. And the pactions agreed upon, bee but in writing, ſigned and ſealed by the parties, and regiſtred for more aſſurance. Without being ſuch an Apprentice in London, and ſerving out ſuch a ſervitude in the ſame Citie for the number of yeeres agreed upon, by order of the Citie amongſt them, no man being never ſo much borne in London, and of parents Londoners is yet admitted to be a Citizen or freeman of London: the like is uſed in other great Cities in England. Beſide, Apprentices, others be hired for wages, and be called ſervants or ſerving men and women throughout the whole Realme, which bee not in ſuch bondage as Apprentices, but ſerve for the time for dayly miniſterie, as *ſervi* and *ancillæ*.

The ſons of freemen of London are alſo free by birth, according to the cuſtome.

cilla did in the time of Gentilitie, and bee for other matters in libertie as full free men and women.

But all ſervants, labourers, and others not married muſt ſerve by the yeere: and if hee bee in covenant, he may not depart out of his ſervice without his Maſters licence, and hee muſt give his Maſter warning that he will depart, one quarter of a yeere before the time of the yeere expireth, or elſe hee ſhall be compelled to ſerve out another yeere. And if any young man unmarried bee without ſervice, hee ſhall bee compelled to get him a maſter, whom hee muſt ſerve for that yeere, or elſe hee ſhall bee puniſhed with ſtockes and whipping, as an idle Vagabond. And if any man married, or unmarried, not having rent or living ſufficient to maintaine himſelfe, do live ſo idly, hee is enquired of, and ſometime ſent to the Jayle, ſometime otherwiſe puniſhed as a ſturdie Vagabond:

ſo

ſo much our policie doth abhorre idleneſſe. This is one of the chiefe charges of the Juſtices of Peace in every Shire. It is taken for ungentleneſſe, diſhonour, and a ſhew of enmity, if any Gentleman do take another Gentlemans ſervant (although his maſter doe put him away) without ſome certificate from his Maſter, either by word or writing that hee hath diſcharged him of his ſervice. That which is ſpoken of men-ſervants, the ſame is alſo ſpoken of women: So that all youth that hath not ſufficient revenues to maintaine it ſelfe, muſt needs with us ſerve, and that after an order as I have written. Thus neceſſity and want of Bondmen hath made men to uſe Freemen as Bondmen to all ſervile ſervices: but yet more liberally and freely, and with a more equality and moderation, then in time of Gentilitie Slaves and Bondmen were wont to bee uſed, as I have ſaid before. This firſt and latter

fashion of temporall servitude, and upon paction, is used in such Countries as have left off the old accustomed manner of servants, slaves, bondmen and bond-women, which was in use before they had received the Christian faith. Some after one sort, some either more or lesse rigorously, according as the nature of the people is inclined, or hath devised amongst themselves, for the necessity of servants.

CHAP. XI.

Of the Court which is Spirituall or Ecclesiasticall, and in the Booke of Law, Court Christian, Curia Christianitatis.

THe Archbishops and Bishops have a certaine peculiar jurisdiction unto them, especially in foure manner of causes: Testaments and legations, Tithes and Mortuaries, Marriage and Adultery or

or Fornication, and alſo of ſuch things as appertaine to Orders amongſt themſelves, and matters concerning Religion. For as it doth appeare, our Anceſtors having the Common-wealth before ordained and ſet in frame, when they did agree to receive the true and Chriſtian Religion, for that which was eſtabliſhed before, and concerned extreme policy (which their Apoſtles, Doctors, and Preachers did allow) they held and kept ſtill with that which they brought in the new. And thoſe things, in keeping whereof they made conſcience, they committed to them to be ordered and governed as ſuch things of which they had no skill, and as to men in whom, for the holineſſe of their life and good cõſcience, they had a great and ſure confidence. So theſe matters be ordered in their Courts, and after the faſhion and manner of the civill Law, or rather common, by citation, libell, *conteſtationem litis*, Examination of witneſſes privily

privily, by Exceptions, Replications apart, and in writing, Allegations, Matters by ſentences given in writing by Appellations, from one another, as well *à gravamine* as *à ſententia definitiva*, and ſo they have other names, as Proctors, Advocates, Aſſeſſors, Ordinaries, and Commiſſioners, &c. farre from the manner of our order in the Common Law of England, and from that faſhion which I have ſhewed you before. Wherefore if I ſay the Teſtament is falſe and forged, I muſt ſue in the ſpirituall Law; ſo alſo if I demand a Legacie: but if I ſue the Executor, or Adminiſtrator, which is he in our Law, who is in the civill Law *hæres*, or *bonorum mobilium poſſeſſor ab inteſtato*, for a debt which the dead ought me, I muſt ſue in the Temporall Court. Theſe two Courts the Temporall and the Spirituall, be ſo divided, that whoſoever ſueth for any thing to Rome, or in any Spirituall Court for that cauſe or action,

action, which may bee pleaded in the Temporall Court of the Realm, by an old Law of England, hee falleth into a *Præmunire*, that is, hee forfeiteth all his goods to the Prince, and his body to remaine in prison during the Princes pleasure: and not that onely but the Judge, the Scribe, the Procuror and Assessour which receiveth and doth maintaine that usurped pleading, doth incurre the same danger. Whether the word *Præmunire* doth betoken that the authoritie and jurisdiction of the Realme is provided for before, and defended by that Law, and therefore it hath that name *Præmunire*, or *Præmuniri*; or because that by that law such an attemptor hath had warning given before to him of the danger, into which hee falleth by such attempt, and then *Præmunire* is barbarously written for *Præmoneri*, *Præmuniri*, (as some men have held opinion) I will not define: the effect is as I have declared: and the Law was

first

first made in King *Richard* the ſeconds time, and is the remedy which is uſed when the ſpirituall juriſdiction will goe about to encroach any thing upon the Temporall Courts. Becauſe this Court or forme which is called *Curia Chriſtianitatis*, is yet taken, as appeareth, for an externe and forraign court, & differeth from the policy and manner of government of the Realme, and is another Court (as appeareth by the Act and Writ of *Præmunire*) then *Curia Regis aut Reginæ*: yet at this preſent this Court as well as others, hath her force, power, authoritie, rule, and juriſdiction, from the Royall Majeſtie, and the Crown of England, and from no other forraigne Potentate or power under God; which being granted (as indeed it is true) it may now appeare by ſome reaſon that the firſt Statute of *Præmunire*, whereof I have ſpoken, hath now no place in England, ſeeing there is no pleading *alibi quàm in Curia Regis ac Reginæ.*

I have

I have declared ſummarily as it were in a Chart or Map, or as *Ariſtotle* termeth it, ὡς ἐν τύπῳ, the forme and manner of government of England; and the policy thereof, and ſet before your eyes the prinpall points wherein it doth differ from the policie and government at this time uſed in France, Italy, Spaine, Germany, and all other Countries, which doe follow the civill law of the Romanes, compiled by *Juſtinian* into his Pandects and Code; not in that ſort, as *Plato* made his Common-wealth, or *Xenophon* his Kingdome of Perſia; nor as Sir *Thomas Moore* his *Utopia*, being fained Common-wealthes, ſuch as never were nor ſhall be, vaine imaginations, fantaſies of Philoſophers, to occupie the time, and to exerciſe their wits: but as England ſtandeth, and is governed at this day the eight and twenty of March, *Anno* 1565. in the ſeventh yeer of the Raigne and Adminiſtration thereof by the moſt Religious, vertuous

tuous, and Noble Queene *Elizabeth*, Daughter to King *Henry* the Eighth, and in the one and fiftieth yeere of mine age, when I was Embaſſadour for her Majeſty in the Court of France, the Scepter wherof at that time the noble Prince of great hope *Charles Maximilian* did hold, having then raigned foure yeeres. So that whether I write true or not, it is eaſie to be ſeene with eyes (as a man would ſay) and felt with hands. Wherefore this being as a project or table of a Common-wealth truly laid before you, not fained by putting a caſe: let us compare it with Common-wealths which be at this day in *eſſe*, or doe remaine deſcribed in true Hiſtories, eſpecially in ſuch points wherein the one differeth from the other, to ſee who hath taken righter, truer, and more commodious way to governe the people, as well in warre as in peace. This will bee no illiberall occupation for him that is a Philoſopher, and hath a delight in diſputing,

ting, nor unprofitable for him who hath to doe, and hath good will to serve the Prince and Common-wealth, in giving counsell for the better administration thereof.

Thomas Smith.

FINIS.

LONDON,
Printed by *Robert Young*, for *John Smethwicke*, and are to be ſold at his ſhop in Saint *Dunſtanes* Church-yard, under the Dyall. 1640.